



ORANGE COUNTY SANITATION DISTRICT Memorandum

April 29, 2019

TO: Operations Committee Members
Orange County Sanitation District

FROM: Kelly A. Lore
Clerk of the Board

RE: LATE COMMUNICATION

The Clerk of the Board received communication after the publication of the agenda regarding Item No. 6 – presented to the OCSD Operations Committee (corrections/additions highlighted in red):

NON-CONSENT:

6. FERRIC CHLORIDE PURCHASE (Rob Thompson)

RECOMMENDATION: Recommend to the Board of Directors to:

- A. Approve a ~~Purchase Order~~ **Chemical Supplier** Agreement with Pencco, Inc. for the purchase of liquid ferric chloride, Specification No. C-2019-1037BD, for the period beginning July 1, 2019 through June 30, 2020, for a unit price of \$597 per dry ton delivered, for an estimated annual amount of \$1,791,000 (plus applicable sales tax) with four (4) one-year renewal options;
- B. Approve a ~~Purchase Order~~ **Chemical Supplier** Agreement with Kemira Water Solutions, Inc. for the purchase of liquid ferric chloride, Specification No. C-2019-1037BD, for the period beginning July 1, 2019 through June 30, 2020, for a unit price of \$630 per dry ton delivered, for an estimated annual amount of \$3,150,000 (plus applicable sales tax) with four (4) one-year renewal options; and
- C. Approve a unit price contingency of 10% per agreement.

*Attachments have been added online

CHEMICAL SUPPLIER AGREEMENT
Purchase of Liquid Ferric Chloride (FeCl₃)
Specification No. C-2019-1037BD

THIS AGREEMENT is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OCSD") and Pencco, Inc. with a principal place of business at 831 Bartlett Road, Sealy, TX 77474 (hereinafter referred to as "Supplier") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily engage Supplier to provide Ferric Chloride (FeCl₃) as described in Exhibit "A"; and

WHEREAS, Supplier submitted its Proposal dated April 1, 2019; and

WHEREAS, on May 22, 2019, the Board of Directors of OCSD, by minute order, authorized execution of this Agreement between OCSD and Supplier; and

WHEREAS, OCSD has chosen Supplier to provide Ferric Chloride (FeCl₃) in accordance with Ordinance No. OCSD-52; and

NOW, THEREFORE, in consideration of the mutual promises and mutual benefits exchanged between the Parties, the Parties mutually agreed as follows:

1. Introduction

1.1 This Agreement and all exhibits hereto (called the "Agreement") is made by OCSD and the Supplier. The terms and conditions herein exclusively govern the purchase of Ferric Chloride (FeCl₃) as described in Exhibit "A".

1.2 Exhibits to this Agreement are incorporated by reference and made a part of this Agreement as though fully set forth at length herein.

Exhibit "A" Scope of Work
Exhibit "B" Proposal
Exhibit "C" Acknowledgement of Insurance Requirements
Exhibit "D" OCSD Safety Standards
Exhibit "E" Human Resources Policies
Exhibit "F" Not Used

1.3 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the exhibits hereto, the provisions of this Agreement shall in all respects govern and control.

1.4 This Agreement may not be modified, changed, or supplemented, nor may any obligations hereunder be waived or extensions of time for performance granted, except by written instrument signed by both Parties.

1.5 The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any section or provision hereof.

- 1.6 The term “days”, when used in the Agreement, shall mean calendar days, unless otherwise noted as workdays.
- 1.7 The term “workday”. Workdays are defined as all days that are not Saturday, Sunday, or OCSD observed holidays. Meetings with OCSD staff shall be scheduled from Monday through Thursday between the hours of 8 a.m. and 4 p.m. (exception is Operations staff who maintain plant operations 24 hours per day 7 days per week and work a rotated 12-hour shift) and shall conform to OCSD work schedules.
- 1.8 OCSD holidays (non-working days) are as follows: New Year’s Day, Lincoln’s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.9 Work Hours: The work required under this Agreement may include normal business hours, evenings, and weekends.
- 1.10 Supplier shall provide OCSD with all required premiums and/or overtime work at no charge beyond the total amount of the Agreement.
- 1.11 Except as expressly provided otherwise, OCSD accepts no liability for any expenses, losses, or action incurred or undertaken by Supplier as a result of work performed in anticipation of purchases of said services by OCSD.

2. Delivery

- 2.1 **LOCATIONS:** Deliveries shall be made in accordance with the Scope of Work, Exhibit “A”.
- 2.2 OCSD will pay only for the actual quantity of Ferric Chloride delivered, based upon certified tare weight and net weight. The quantity invoiced by Supplier and payable by OCSD will be for the total net weight of Ferric Chloride delivered (loaded gross weight minus the tare weight). Tare weight shall be determined immediately after each delivery and prior to cleaning, emptying, or clearing the delivery tank.
- 2.3 A bill of lading shall accompany all shipments in accordance with Exhibit “A”.

3. **Possession** Ownership and control of all Ferric Chloride delivered pursuant to this Agreement shall remain solely and exclusively with Supplier, until complete transfer of possession by delivery to OCSD at the designated locations is made by Supplier.

4. Quantity

- 4.1 OCSD makes no guarantee to actual use or quantity of Ferric Chloride purchased. Use may be sporadic based on the wastewater treatment requirements unique to each treatment plant.
- 4.2 OCSD will, through the term of this Agreement, purchase Ferric Chloride from Supplier exclusively, except when OCSD determines Supplier cannot make delivery within the time specified, with the quality and quantity specified, at the Agreement price, the level of Service is inadequate, OCSD unapproved increase in active dry pound rate or for any other default or breach of this Agreement. In such event, OCSD may purchase Ferric Chloride elsewhere and charge Supplier any difference in the delivered price to OCSD from that provided in this Agreement, or alternatively, OCSD may terminate the Agreement based on said breach or failure to deliver the specified product. Quality control tests will be performed by OCSD on

the delivered Ferric Chloride to ensure it is consistent with the requirements specified in Exhibit "A".

5. Pricing and Invoicing

5.1 Supplier will invoice for Ferric Chloride delivered in accordance with Exhibit "A", and in accordance with the unit price(s) listed in Exhibit "B". Prices shall include all cartage and taxes except California State Sales Tax. The sales tax will be paid by OCSD.

5.2 OCSD shall pay, net thirty (30) days, upon receipt and approval by OCSD of itemized invoices, submitted in a form acceptable to OCSD to enable audit of the charges thereon. Supplier shall email invoices to OCSD Accounts Payable at APStaff@OCSD.com and "INVOICE" with the Purchase Order Number and Ferric Chloride shall be referenced in the subject line. All invoices shall include a description of the delivery location, the delivery date and the unit price(s).

6. Modifications

6.1 This Agreement may be modified or changed only by written instrument in the form of an amendment to this Agreement signed by both Parties.

6.2 Pricing modifications: The prices established in this Agreement shall remain firm for the one-year Agreement term. Quarterly pricing will not be accepted. Any adjustments made will allow for increases or decreases in the manufactured cost of the Ferric Chloride and will be based upon OCSD validated information furnished by Supplier and OCSD sources. Adjustments will only be reviewed on an annual basis. OCSD reserves the right to agree with or reject the proposed unit price increase or decrease.

7. Agreement Term The Services provided under this Agreement shall be for the period of one (1) year commencing on July 1, 2019 and continuing through June 30, 2020.

8. Renewals

8.1 OCSD may exercise the option to renew the Agreement for up to four (4) one-year periods based upon the criteria set forth in Exhibit "A", if mutually acceptable terms can be negotiated. OCSD shall make no obligation to renew nor give reason if it elects not to renew.

8.1.1 Renewals may be made through the OCSD Purchase Order Process.

8.2 The prices established in the original Agreement may be adjusted. The adjustment will allow for any increase or decrease in the manufactured cost of the Ferric Chloride and will be based upon OCSD validated information furnished by Supplier and OCSD sources. Adjustments will only be reviewed on an annual basis. OCSD reserves the right to agree with or reject the proposed unit price increase or decrease.

8.2.1 Price adjustments shall be made by amendment to this Agreement signed by both Parties.

9. Termination

9.1 OCSD reserves the right to terminate this Agreement for its convenience, with or without cause, in whole or in part, at any time, by written notice from OCSD. Upon receipt of a termination notice, Supplier shall immediately discontinue all work under this Agreement (unless the notice directs otherwise). OCSD shall thereafter, within thirty (30) days, pay Supplier for work performed (cost and fee) to the date of termination. Supplier expressly waives any claim to receive anticipated profits to be earned during the uncompleted portion of this Agreement. Such notice of termination shall terminate this Agreement and release

OCSD from any further fee, cost or claim hereunder by Supplier other than for work performed to the date of termination.

9.2 OCSD reserves the right to terminate this Agreement immediately upon OCSD's determination that Supplier is not meeting specification requirements for delivery of quantities needed, the level of service is inadequate, for poor quality of product, for OCSD unapproved increase in unit price(s), or any other default or breach of this Agreement.

9.3 OCSD may also immediately terminate for default of this Agreement in whole or in part by written notice to Supplier:

- if Supplier becomes insolvent or files a petition under the Bankruptcy Act; or
- if Supplier sells its business; or
- if Supplier breaches any of the terms of this Agreement; or
- if total amount of compensation exceeds the amount authorized under this Agreement.

9.4 All OCSD property in the possession or control of Supplier shall be returned by Supplier to OCSD upon demand, or at the termination of this Agreement, whichever occurs first.

10. **Indemnification and Hold Harmless** Supplier shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Supplier's services under this Agreement, or by its subcontractor or by anyone directly or indirectly employed by Supplier, and whether such damage or injury shall accrue or be discovered before or after the termination of the Agreement. Except as to the sole active negligence of or willful misconduct of OCSD, Supplier shall indemnify, protect, defend and hold harmless OCSD, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Supplier's performance under this Agreement, and/or (b) on account of any goods and services provided under this Agreement. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Supplier or anyone employed by or working under Supplier. To the maximum extent permitted by law, Supplier's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Supplier agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD. This section shall survive the expiration or early termination of the Agreement.

11. **Insurance** Supplier shall purchase and maintain, throughout the life of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Acknowledgement of Insurance Requirements, Exhibit "C". Supplier shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OCSD, nor shall Supplier allow any subcontractor to commence service pursuant to a subcontract until all insurance required of the subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Agreement.

12. **Equipment Loss** OCSD will be responsible for any loss or damage to Supplier-owned equipment, when OCSD determines OCSD is at fault, only to the extent of OCSD's fault, and will reimburse Supplier for such loss or damage upon receipt of invoices, minus a deduction for any amount determined to be the fault of Supplier or its subcontractor or a third party.
13. **Conflict of Interest and Reporting** Supplier shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Supplier's Relationship to OCSD** Supplier's relationship to OCSD in the performance of this Agreement is that of an independent contractor. The personnel performing Services under this Agreement shall, at all times, be under Supplier's exclusive direction and control, and shall be employees of Supplier and not employees of OCSD. Supplier shall pay all wages, salaries and other amounts due its employees in connection with this Agreement, and shall be responsible for all legal reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, worker's compensation and similar matters.
15. **OCSD Safety Standards**
 - 15.1 In addition to the requirements set forth in Exhibit "A", Supplier shall meet with personnel from OCSD'S Risk Management Division prior to providing Services to OCSD to review safety and accident prevention policies and procedures. All subcontractors should be present at this meeting. Supplier is responsible to inform all subcontractors of the items discussed at this meeting. Supplier shall not be permitted to provide Services to OCSD prior to this meeting.
 - 15.2 OCSD requires Supplier and its subcontractor(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OCSD Safety Standards while working at OCSD locations. If during the course of the Agreement it is discovered that OCSD Safety Standards do not comply with Federal, State, or local regulations, then the Supplier is required to follow the most stringent regulatory requirement at no additional cost to OCSD. Supplier and all of its employees and subcontractors, shall adhere to all applicable OCSD Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies (Exhibit "E").
16. **Drug-Free Workplace** All employees of Supplier who will perform work under this Agreement must adhere to the California Drug-Free Workplace Act, Government Code Sections 8350 through 8357.
17. **Assignments** Neither this Agreement nor any interest herein or any claim hereunder may be assigned by Supplier either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by Supplier without the prior written consent of OCSD.
18. **Attorney's Fees** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to any other relief to which it may be entitled.

19. **Permits, Ordinances and Regulations** Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to work performed under the terms of this Agreement shall be paid by Supplier. Fees demanded for obtaining certificates, including associated inspection fees and expenses of regulatory inspectors shall be paid by Supplier.
20. **Training Certification** When required by regulation, certificates of training shall be maintained on-site for the duration of the activity that requires an employee of Supplier to be certified. Certificates shall be current. Lack of certificates when required will be cause for removal of offending personnel from the site, termination of the Agreement, or both.
21. **Compliance with Law** Supplier warrants that under the performance of this Agreement, it shall comply with all applicable Federal, State and local laws, and all lawful orders rules and regulations thereunder. In connection with the execution of this Agreement, Supplier shall not discriminate against employees or an applicant for employment because of race, religion, color, sex or national origin. Supplier shall take affirmative action to ensure that applicants are employed and employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.
22. **Disputes**
- 22.1 This Agreement shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in Orange County, in the event any action is brought in connection with this Agreement or the performance thereof. Pending final resolution of a dispute hereunder, Supplier shall proceed diligently with the performance of this Agreement and in accordance with OCSD'S decision.
- 22.2 In the event of a dispute as to the construction or interpretation of this Agreement, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.
- 22.3 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of Agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

23. Right to Review Services, Facilities, and Records

- 23.1 OCSD reserves the right to review any portion of the Services performed by Supplier under this Agreement, and Supplier agrees to cooperate to the fullest extent possible. Supplier shall furnish to OCSD such reports, statistical data, and other information pertaining to Supplier's Services as shall be reasonably required by OCSD to carry out its rights and responsibilities under its agreements with its bondholders or noteholders and in connection with the issuance of its official statements and other prospectuses with respect to the offering, sale, and issuance of its bond and other obligations.
- 23.2 The right of OCSD to review or approve specifications, procedures, instructions, reports, test results, calculations, schedules, or other data that are developed by Supplier shall not relieve Supplier of any obligation set forth herein.

24. Incorporated Documents

- 24.1 The Scope of Work, Proposal, Acknowledgement of Insurance Requirements, OCSD Safety Standards, and Human Resources Policies are hereby incorporated into and made a part of this Agreement, and unless modified or changed hereinabove, are controlling for all matters pertaining to the supply of Ferric Chloride and the manner of performance thereof.
- 24.2 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the other incorporated documents, the provisions of this Agreement shall in all respects govern and control.

25. Severability Any provision of this Agreement which is found to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, and the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remaining provisions hereof.

26. Waiver The waiver of either party of any breach or violation of, or default under, any provision of this Agreement, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder.

27. Breach Any breach by Supplier to which OCSD does not object shall not operate as a waiver of OCSD to seek remedies available to it for any subsequent breach.

28. Public Contracts Law OCSD is subject to the provisions listed in the prevailing wage determination made by the Director of the Department of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. It is agreed that all provisions of law applicable to public contracts are part of this Agreement to the same extent as though set forth herein and will be complied with by Supplier. Supplier shall not pay less than the prevailing wage.

29. South Coast Air Quality Management District's (SCAQMD) Requirements It is Supplier's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.

30. Performance Time is of the essence in the performance of the provisions hereof.

31. **Familiarity with Work** By executing this Agreement, Supplier warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should Supplier discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Supplier's risk, until written instructions are received from OCSD.
32. **Damage to OCSD'S Property** Any OCSD property damaged by Supplier, its subcontractor(s), or by the personnel of either will be subject to repair or replacement by Supplier at no cost to OCSD.
33. **Third Party Rights** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OCSD and Supplier.
34. **Authority to Execute** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the Parties are formally bound.
35. **Read and Understood** By signing this Agreement, Supplier represents that it has read and understood the terms and conditions of the Agreement.
36. **Entire Agreement** This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.
37. **Notices** All notices under this Agreement must be in writing. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Any facsimile notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

OCSD: Jackie Lagade
Senior Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Supplier: R.L. Horne
President
Pencco, Inc.
831 Bartlett Road
Sealy, TX 77474

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Agreement to be signed by the duly authorized representatives.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____

David John Shawver
Chair, Board of Directors

Dated: _____

By: _____

Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____

Lorenzo Tyner
Assistant General Manager
Administrative Services Director

PENCCO, INC.

Dated: _____

By: _____

Print Name and Title of Officer

IRS Employer's I.D. Number

CHEMICAL SUPPLIER AGREEMENT
Purchase of Liquid Ferric Chloride (FeCl₃)
Specification No. C-2019-1037BD

THIS AGREEMENT is made and entered into as of the date fully executed below, by and between Orange County Sanitation District, with a principal place of business at 10844 Ellis Avenue, Fountain Valley, CA 92708 (hereinafter referred to as "OCSD") and Kemira Water Solutions, Inc. with a principal place of business at 4321 West 6th Street, Lawrence, KS 66049 (hereinafter referred to as "Supplier") collectively referred to as the "Parties".

WITNESSETH

WHEREAS, OCSD desires to temporarily engage Supplier to provide Ferric Chloride (FeCl₃) as described in Exhibit "A"; and

WHEREAS, Supplier submitted its Proposal dated March 28, 2019; and

WHEREAS, on May 22, 2019, the Board of Directors of OCSD, by minute order, authorized execution of this Agreement between OCSD and Supplier; and

WHEREAS, OCSD has chosen Supplier to provide Ferric Chloride (FeCl₃) in accordance with Ordinance No. OCSD-52; and

NOW, THEREFORE, in consideration of the mutual promises and mutual benefits exchanged between the Parties, the Parties mutually agreed as follows:

1. Introduction

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- if total amount of compensation exceeds the amount authorized under this Agreement.

9.4 All OCSD property in the possession or control of Supplier shall be returned by Supplier to OCSD upon demand, or at the termination of this Agreement, whichever occurs first.

10. **Indemnification and Hold Harmless** Supplier shall assume all responsibility for damages to property and/or injuries to persons, including accidental death, which may arise out of or be caused by Supplier's services under this Agreement, or by its subcontractor or by anyone directly or indirectly employed by Supplier, and whether such damage or injury shall accrue or be discovered before or after the termination of the Agreement. Except as to the sole active negligence of or willful misconduct of OCSD, Supplier shall indemnify, protect, defend and hold harmless OCSD, its elected and appointed officials, officers, agents and employees, from and against any and all claims, liabilities, damages or expenses of any nature, including attorneys' fees: (a) for injury to or death of any person or damage to property or interference with the use of property, arising out of or in connection with Supplier's performance under this Agreement, and/or (b) on account of any goods and services provided under this Agreement. This indemnification provision shall apply to any acts or omissions, willful misconduct, or negligent misconduct, whether active or passive, on the part of Supplier or anyone employed by or working under Supplier. To the maximum extent permitted by law, Supplier's duty to defend shall apply whether or not such claims, allegations, lawsuits, or proceedings have merit or are meritless, or which involve claims or allegations that any of the parties to be defended were actively, passively, or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage, or injury. Supplier agrees to provide this defense immediately upon written notice from OCSD, and with well qualified, adequately insured, and experienced legal counsel acceptable to OCSD. This section shall survive the expiration or early termination of the Agreement.

11. **Insurance** Supplier shall purchase and maintain, throughout the life of this Agreement and any periods of warranty or extensions, insurance in amounts equal to the requirements set forth in the signed Acknowledgement of Insurance Requirements, Exhibit "C". Supplier shall not commence work under this Agreement until all required insurance is obtained in a form acceptable to OCSD, nor shall Supplier allow any subcontractor to commence service pursuant to a subcontract until all insurance required of the subcontractor has been obtained. Failure to maintain required insurance coverage shall result in termination of this Agreement.

12. **Equipment Loss** OCSD will be responsible for any loss or damage to Supplier-owned equipment, when OCSD determines OCSD is at fault, only to the extent of OCSD's fault, and will reimburse Supplier for such loss or damage upon receipt of invoices, minus a deduction for any amount determined to be the fault of Supplier or its subcontractor or a third party.
13. **Conflict of Interest and Reporting** Supplier shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
14. **Supplier's Relationship to OCSD** Supplier's relationship to OCSD in the performance of this Agreement is that of an independent contractor. The personnel performing Services under this Agreement shall, at all times, be under Supplier's exclusive direction and control, and shall be employees of Supplier and not employees of OCSD. Supplier shall pay all wages, salaries and other amounts due its employees in connection with this Agreement, and shall be responsible for all legal reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, worker's compensation and similar matters.
15. **OCSD Safety Standards**
- 15.1 In addition to the requirements set forth in Exhibit "A", Supplier shall meet with personnel from OCSD'S Risk Management Division prior to providing Services to OCSD to review safety and accident prevention policies and procedures. All subcontractors should be present at this meeting. Supplier is responsible to inform all subcontractors of the items discussed at this meeting. Supplier shall not be permitted to provide Services to OCSD prior to this meeting.
- 15.2 OCSD requires Supplier and its subcontractor(s) to follow and ensure their employees follow all Federal, State, and local regulations as well as OCSD Safety Standards while working at OCSD locations. If during the course of the Agreement it is discovered that OCSD Safety Standards do not comply with Federal, State, or local regulations, then the Supplier is required to follow the most stringent regulatory requirement at no additional cost to OCSD. Supplier and all of its employees and subcontractors, shall adhere to all applicable OCSD Safety Standards attached hereto in Exhibit "D" and the Human Resources Policies (Exhibit "E").
16. **Drug-Free Workplace** All employees of Supplier who will perform work under this Agreement must adhere to the California Drug-Free Workplace Act, Government Code Sections 8350 through 8357.
17. **Assignments** Neither this Agreement nor any interest herein or any claim hereunder may be assigned by Supplier either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by Supplier without the prior written consent of OCSD.
18. **Attorney's Fees** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to any other relief to which it may be entitled.
19. **Permits, Ordinances and Regulations** Any and all fees required by Federal, State, County, City and/or municipal laws, codes and/or tariffs that pertain to work performed under the terms of this Agreement shall be paid by Supplier. Fees demanded for obtaining

certificates, including associated inspection fees and expenses of regulatory inspectors shall be paid by Supplier.

20. Training Certification When required by regulation, certificates of training shall be maintained on-site for the duration of the activity that requires an employee of Supplier to be certified. Certificates shall be current. Lack of certificates when required will be cause for removal of offending personnel from the site, termination of the Agreement, or both.

21. Compliance with Law Supplier warrants that under the performance of this Agreement, it shall comply with all applicable Federal, State and local laws, and all lawful orders rules and regulations thereunder. In connection with the execution of this Agreement, Supplier shall not discriminate against employees or an applicant for employment because of race, religion, color, sex or national origin. Supplier shall take affirmative action to ensure that applicants are employed and employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.

22. Disputes

22.1 This Agreement shall be governed by and interpreted under the laws of the State of California and the Parties submit to jurisdiction in Orange County, in the event any action is brought in connection with this Agreement or the performance thereof. Pending final resolution of a dispute hereunder, Supplier shall proceed diligently with the performance of this Agreement and in accordance with OCSD'S decision.

22.2 In the event of a dispute as to the construction or interpretation of this Agreement, or any rights or obligations hereunder, the Parties shall first attempt, in good faith, to resolve the dispute by mediation. The Parties shall mutually select a mediator to facilitate the resolution of the dispute. If the Parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Agreement, through the alternate dispute resolution procedures of Judicial Arbitration through Mediation Services of Orange County ("JAMS"), or any similar organization or entity conducting an alternate dispute resolution process.

22.3 In the event the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure, Part 3, Title 9, Sections 1280 et seq. For such purpose, an agreed arbitrator shall be selected, or in the absence of Agreement, each party shall select an arbitrator, and those two (2) arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure Section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court for the County of Orange, with a right of appeal from any judgment issued therein.

23. Right to Review Services, Facilities, and Records

- 23.1 OCSD reserves the right to review any portion of the Services performed by Supplier under this Agreement, and Supplier agrees to cooperate to the fullest extent possible. Supplier shall furnish to OCSD such reports, statistical data, and other information pertaining to Supplier's Services as shall be reasonably required by OCSD to carry out its rights and responsibilities under its agreements with its bondholders or noteholders and in connection with the issuance of its official statements and other prospectuses with respect to the offering, sale, and issuance of its bond and other obligations.
- 23.2 The right of OCSD to review or approve specifications, procedures, instructions, reports, test results, calculations, schedules, or other data that are developed by Supplier shall not relieve Supplier of any obligation set forth herein.

24. Incorporated Documents

- 24.1 The Scope of Work, Proposal, Acknowledgement of Insurance Requirements, OCSD Safety Standards, and Human Resources Policies are hereby incorporated into and made a part of this Agreement, and unless modified or changed hereinabove, are controlling for all matters pertaining to the supply of Ferric Chloride and the manner of performance thereof.
- 24.2 In the event of any conflict or inconsistency between the provisions of this Agreement and any of the provisions of the other incorporated documents, the provisions of this Agreement shall in all respects govern and control.

25. Severability Any provision of this Agreement which is found to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, and the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remaining provisions hereof.

26. Waiver The waiver of either party of any breach or violation of, or default under, any provision of this Agreement, shall not be deemed a continuing waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder.

27. Breach Any breach by Supplier to which OCSD does not object shall not operate as a waiver of OCSD to seek remedies available to it for any subsequent breach.

28. Public Contracts Law OCSD is subject to the provisions listed in the prevailing wage determination made by the Director of the Department of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. It is agreed that all provisions of law applicable to public contracts are part of this Agreement to the same extent as though set forth herein and will be complied with by Supplier. Supplier shall not pay less than the prevailing wage.

29. South Coast Air Quality Management District's (SCAQMD) Requirements It is Supplier's responsibility that all equipment furnished and installed be in accordance with the latest rules and regulations of the South Coast Air Quality Management District (SCAQMD). All work practices, which may have associated emissions such as sandblasting, open field spray painting or demolition of asbestos containing components or structures, shall comply with the appropriate rules and regulations of the SCAQMD.

30. Performance Time is of the essence in the performance of the provisions hereof.

31. **Familiarity with Work** By executing this Agreement, Supplier warrants that: 1) it has investigated the work to be performed; 2) it has investigated the site of the work and is aware of all conditions there; and 3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should Supplier discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCSD, it shall immediately inform OCSD of this and shall not proceed, except at Supplier's risk, until written instructions are received from OCSD.
32. **Damage to OCSD'S Property** Any OCSD property damaged by Supplier, its subcontractor(s), or by the personnel of either will be subject to repair or replacement by Supplier at no cost to OCSD.
33. **Third Party Rights** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than OCSD and Supplier.
34. **Authority to Execute** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the Parties are formally bound.
35. **Read and Understood** By signing this Agreement, Supplier represents that it has read and understood the terms and conditions of the Agreement.
36. **Entire Agreement** This Agreement constitutes the entire agreement of the Parties and supersedes all prior written or oral and all contemporaneous oral agreements, understandings, and negotiations between the Parties with respect to the subject matter hereof.
37. **Notices** All notices under this Agreement must be in writing. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Any facsimile notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

OCSD: Jackie Lagade
Senior Buyer
Orange County Sanitation District
10844 Ellis Avenue
Fountain Valley, CA 92708

Supplier: Christina M. Imbrogno
Customer Service Manager
Kemira Water Solutions, Inc.
4321 West 6th Street
Lawrence, KS 66049

IN WITNESS WHEREOF, intending to be legally bound, the Parties hereto have caused this Agreement to be signed by the duly authorized representatives.

ORANGE COUNTY SANITATION DISTRICT

Dated: _____

By: _____

David John Shawver
Chair, Board of Directors

Dated: _____

By: _____

Kelly A. Lore
Clerk of the Board

Dated: _____

By: _____

Lorenzo Tyner
Assistant General Manager
Administrative Services Director

KEMIRA WATER SOLUTIONS, INC.

Dated: _____

By: _____

Print Name and Title of Officer

IRS Employer's I.D. Number