ITEM NO. 5

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 30, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **INCREASE TO PURCHASE ORDER WITH CALIFORNIA WATER TECHNOLOGIES FOR FERRIC CHLORIDE**

SYNOPSIS

Staff recommends that the City Council approve an increase to a purchase order to California Water Technologies of Pasadena for wastewater chemicals for an overall increase of $54,446, and authorize the Financial Services Director or designee, to execute the revised purchase order.

BACKGROUND

On June 6, 2012, Water Utilities staff held an online reverse auction for the purchase of various chemicals for use at its water and wastewater facilities, using the criteria of best product for the needed purpose at the lowest price. At the designated time, eight chemical suppliers logged onto the auction site and participated in a bidding process with 79 bids and 16 quotes placed in just over an hour. The quotes reflected the prices at which the vendors were willing to supply the requested chemical product.

Due to an error made during the auction, Brenntag Pacific, the apparent low bidder, provided an artificially low price, below the supplier's cost. Brenntag initially honored the low price, with an understanding that the City would attempt to correct the pricing during the contract term.

On October 17, 2012, staff returned to Council and requested an amendment to the existing Purchase Order with Brenntag, at a new rate of $596/dry ton. Council rejected this amendment and instructed staff to revisit the process.

ANALYSIS

Staff considered several alternatives, including rebidding the contract for Ferric Chloride. The City's purchasing procedures allow for piggybacking onto an existing public agency agreement, and staff determined this method to be most feasible for this procurement.

Staff contacted jurisdictions in Southern California, including the City of San Diego, the City of Escondido, West Basin Municipal Water District, San Elijo Joint Powers Association, and Encina Wastewater Authority (Encina) and reviewed their purchasing

agreements for chemicals. Encina has a competitively bid pricing agreement with California Water Technologies for the purchase of Ferric Chloride at a cost of $549/dry ton plus applicable sales tax. California Water Technologies has agreed to honor this pricing for the City of Oceanside Water Utilities Department. Under section 28A.24 (b) of the Oceanside City Code, the City may purchase goods or services using agreements maintained by other public agencies.

An initial purchase order for less than $50,000 was requested with California Water Technologies to meet interim needs for Ferric Chloride. Staff is now requesting an increase to that purchase order to meet needs through the end of the fiscal year, which is currently projected to be approximately 175 dry tons. The existing purchase order is for 83 dry tons, this increase will add another 92 dry tons, for a total of 175 dry tons. With sales tax, the increase to the existing PO is $54,446, for a total purchase order amount of $103,761.

FISCAL IMPACT

Staff recommends that the City Council approve an increase of $54,446 to purchase order 1001623 with California Water Technologies for the purchase of Ferric Chloride at a price of $549/dry ton, for a total Purchase Order amount not to exceed $103,761.

The FY 2012-13 adopted budget for the San Luis Rey Wastewater Treatment Plant Chemical line item (800805721.5355.0002) was $1,565,000, and over $70,000 remains. Therefore, sufficient funds exist to cover this cost change order.

The agreement with Encina has a possibility of two (2) one (1)-year extensions, with a cost increase or decrease of not-to-exceed 5% per year. Should Encina choose to extend its agreement, staff recommends continuing to use this agreement for Ferric Chloride, based on pricing. The Water Utilities Department would include the cost of this agreement as part of its annual budget submittal.

CITY ATTORNEY'S ANALYSIS

Purchases must comply with bid requirements set forth in Chapter 28A of the City Code. Professional services agreements must be reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

Staff recommends that the City Council approve an increase to a purchase order to California Water Technologies of Pasadena for wastewater chemicals for an overall increase of $54,446, and authorize the Financial Services Director or designee, to execute the revised purchase order.

PREPARED BY:

Jason Dafforn
Water Utilities Division Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

for Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A: Purchase Order

City of Oceanside

300 N. Coast Hwy. Oceanside, CA 92054

Shipped From

California Water Technologies LLC
PO Box 10100
Pasadena CA 91189-1001

313864

Ship To

San Luis Rey Waste Water Treatment Plant

3950 N. River Rd.
Oceanside CA 92057

P.O. No.	**1001623 - 000**
Date	12/19/2012
Branch/Plant	**800805721**
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Original

Ordered	Requested	Comments
12/19/2012	12/19/2012	Piggyback on Encina Waste Water Authority Contract Pricing & Specs. PO requested by John McKelvey.

Line	Rev	Description/Supplier Item	Ordered	UOM	Unit Price	PU UM	Extended Price	Account Number
1.000	0	Ferric Chloride Per Specifi-cations		LS	.0000	LS	45,567.00	800805721.5355.0002
2.000	0	Sales Tax		LS	.0000	LS	3,987.11	800805721.5355.0002
					Total Order		49,554.11	

Sales Tax .00

Total Order 49,554.11

12/19/12

PURCHASING OFFICER DATE

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Exhibit A

Conditions: The following standard purchase order conditions are always applicable, and the following work order conditions are also applicable when this order provides for performance of any work. Whenever used herein "CITY" shall mean the City of Oceanside, California.

STANDARD CONDITIONS

1. Law: This contract is governed by the laws of the state of California. The provisions of the Uniform Commercial Code shall apply except as otherwise set forth in this contract.

2. Contract: If no other written agreement between SELLER and CITY has been executed, then this order, when accepted by SELLER either in writing or by the shipment of any article or other commencement of performance hereunder, constitutes the entire contract between SELLER and the CITY: no exceptions, alternates, substitutes or revisions are valid or binding on the CITY unless authorized by the CITY in writing. If a separate written agreement between SELLER and the CITY regarding this order has been executed, then in the event of conflict between the terms of said agreement and this purchase order the provisions of the written agreement shall govern.

3. Delivery: Time of delivery is the essence of this contract. The CITY reserves the right to refuse any goods and to cancel all or any part of the goods not conforming to the applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind CITY to accept future shipments, nor deprive it of the right to return goods already accepted, at SELLER'S expense. Overshipment and undershipment shall be only as agreed to by CITY.

4. Risk of loss: Delivery shall not be deemed to be complete until goods have been actually received and accepted by CITY. Payments shall be made after satisfactory acceptance of shipments by CITY.

5. Warranty: SELLER expressly warrants that the goods covered by this order are free of liens, of merchantable quality and satisfactory and safe for consumer use. Acceptance of this order shall constitute an agreement upon SELLER'S part to indemnify and hold harmless for liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by CITY by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable local, State or Federal codes, ordinances, orders, or statutes including Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any remedies provided by law.

6. Infringement: SELLER shall indemnify and defend CITY, at SELLER'S expense, against all claims, demands, suits, liability and expense on account of alleged infringement of any patent, copyright or trademark, resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any article or material furnished hereunder.

7. Assignment: Neither this order nor any claim against CITY arising directly or indirect out of or in connection with this order shall be assignable by SELLER or by operation of law, nor shall SELLER subcontract any obligations hereunder, without CITY's prior written consent.

8. Default: If SELLER or any subcontractor breaches any provision hereof, or becomes insolvent, enters bankruptcy, receivership or other like proceedings (voluntarily or involuntarily) or makes assignment for the benefit of creditors, CITY shall have the righ in addition to any other rights it may have hereunder or by law, to terminate this order by given SELLER written notice; whereupon (a) CITY shall be relieved of all further obligation hereunder, except to pay reasonable value of SELLER's prior performance, bu not more than contracted price, and (b) CITY may procure the articles or services from other sources and may deduct from unpaid balance due the vendor or may collect against the bond or surety, or may invoice the vendor for excess cost so paid. The price by CITY shall be considered prevailing market price at the time such purchase is made.

9. Labor Disputes: Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, SELLER shall immediately give written notic thereof to CITY.

10. Non-Discrimination: In the performance of the terms of any contract resulting from this order, SELLER agrees not to engage nor permit any subcontractors, where applicabl to engage in discrimination in the employment of persons because of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation of such person.

11. Termination CITY reserves the right to terminate this contract without penalty with cause immediately or without cause after 30 days written notice unless otherwise specifi

12. Taxes: Unless otherwise provided herein or by law, price quoted may not include California State sales or use tax.

13. Shipping Notice: Shall be mailed as soon as material has been forwarded, giving ord number, also condensed description of material.

14. Invoice In Duplicate: Attn. Accounts Payable.

15. Any and All Equipment: Used or purchased in connection with this order must mee the applicable regulations and requirements for operation and/or use in San Diego Count

WORK ORDER CONDITIONS

16. Performance: SELLER shall perform all work diligently, carefully, and in a good and workmanlike manner, shall furnish all labor, supervision, machinery, equipment, materials and supplies necessary therefor, shall obtain and maintain all building and other permits and licenses required by Public authorities in connection with performance of the work, and if permitted to subcontract, shall be fully responsible for all work performed by subcontractors. SELLER shall conduct all operations in SELLER'S own name and as independent contractor, and not in the name of, or as an agent of CITY.

17. SELLER'S Indemnification of the CITY: To the greatest extent allowed by law, SELLER shall indemnify and hold harmless the CITY, its officers, agents and employees against all claims, demands or liability for damages to persons or property arising out of or resulting from SELLER'S performance under any agreement with the CITY pursuant to this Application, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. SELLER'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liabilities assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, SELLER at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or ommissions of the SELLER. SELLER'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the SELLER.

18. Safety/Liability Language: In connection with the performance of this contract, CITY shall have the authority to enter the worksite art any time for the purpose of identifying the existence of conditions, either actual or threatened, that may present a danger or hazard to any and all employees. SELLER agrees that CITY, in its sole authority and discretion, may order the immediate abatement of any and all conditions that may present an actual or threatened danger or hazard to any and all employees at the worksite. SELLER acknowledges the provisions of Section 6400 of the Labor Code, which requires that employers shall furnish employment and a place of employment that is safe and healthful for all employees working therein. In the event CITY identifies the existence of any condition that presents an actual or threatened danger or hazard to any or all employees at the worksite CITY is hereby authorized to order the immediate abatement of that actual or threatened condition pursuant to this section. CITY may also, at its sole authority and discretion, issue an immediate stop work order t SELLER to ensure that no employee working at the worksite is exposed to a dangerous or hazardous condition. Any stop order issued by CITY to SELLER in accordance with the provisions of this Section shall not give rise to any claim or cause of action for delay damages by SELLER or SELLER's agents or subcontractors against CITY.

19. Insurance: SELLER shall maintain in full force during the term of this contract the following insurance and limits not less than those specified (a) Worker's Compensation and Employer's Liability complying with any statutory requirements; (b) Comprehensiv General Liability Insurance including a broad form Property Damage endorsement with $1,000,000 combined single limit each occurrence; (c) Comprehensive Auto Liability (including the owned, nonowned and hired automobile hazards) with a $1,000,000 combined single limit each occurrence; (d) Contractual Liability with $1,000,000 combined single limit each occurrence. If CITY so desires, these limits may be increase or decreased.

20. Bill and Liens: SELLER shall pay promptly all indebtedness for labor, materials an equipment used in performance of the work. SELLER shall not permit any lien or charg to attach to the work or the premises; but if any does so attach, SELLER shall promptly procure its release and indemnify CITY against all damages and expense incident therch

21. Bonds: If CITY so desires, SELLER shall provide payment and performance bonds as required

22. Changes: SELLER shall make no changes in the work or perform any additional work without CITY's specific written approval.