

CONTRACT PURCHASING AGREEMENT

FOR THE PURCHASE OF

FERRIC CHLORIDE SOLUTION FOR THE TREATMENT OF WASTEWATER

THIS AGREEMENT is made this **10th** day of **June, 2020**, by and between the **City of South San Francisco, California**, hereinafter called the "CITY" and **Thatcher Company of California, Inc., P.O. Box 27407 Salt Lake City, UT 84127-0407** hereinafter called the "SELLER", at South San Francisco, County of San Mateo, State of California.

WHEREAS, THE City has determined a need for approximately **50,000** gallons annually of ferric chloride solution delivered in bulk trailer loads to be used as a coagulant in the treatment of wastewater.

WHEREAS, THE SELLER has the capability of delivering ferric chloride solution in the amount as required and in a timely manner.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties agree as follows:

1. Obligations: The CITY agrees to buy one hundred percent (100%) of the City's annual volume requirement from the SELLER. SELLER agrees to sell, and deliver approximately 50,000 gallons of ferric chloride solution to the City in accordance with SELLER'S schedule of delivery.
2. Shipping Terms:
 - (a) SELLER shall ship each shipment of PRODUCT FOB Delivered.
 - (b) All shipments of ferric chloride solution shall be accompanied with the following:
 - i. Bill of Lading
 - ii. Certified Analysis indicating ferric chloride
 - iii. Weighmaster's certificate of weight
 - iv. Applicable regulatory documents
3. SELLER additionally agrees to comply with all provisions contained in City's specifications, which include a requirement that insurance be obtained in the type and amount set forth in the specifications and Section 14 below.
4. Purchase Price: The City agrees to pay to the SELLER, in accordance with the following:
PRODUCT: Ferric Chloride Solution (37% to 42% by weight)
Ship To: Water Quality Control Plant, 195 Belle Air Road, South San Francisco Ca. 94080
Unit Price exclusive of all taxes: \$1.9056 per gallon (\$794.00 per dry ton).
Quantity: approximately **50,000** gallons annually.
Containers: PRODUCT delivered in bulk load (approximately 4,000 gallons per tanker truck/trailer load).
NTE: The total compensation for products purchased under this Agreement shall not exceed

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\$100,000.00

5. Taxes: SELLER shall pay all applicable federal, state, and local taxes which may be chargeable against the delivery of the PRODUCT listed herein.

6. Quantity: The quantity of PRODUCT received, and for which the CITY shall pay SELLER, shall be measured in wet pounds by SELLER'S scales. Any clears of shortage shall be deemed waived unless made in writing and received by SELLER within fifteen (15) days from CITY'S receipt of the shipment in question. Shortages of less than 1% of the net weight of PRODUCTS shall not be contested. The parties agree to exercise best efforts in good faith to resolve any discrepancies regarding the weight of any shipment.

7. Purchase Orders: The CITY shall issue purchase orders to SELLER authorizing the SELLER to provide the PRODUCTS in accordance with this agreement. SELLER will make its best efforts to ship PRODUCT within five (5) business days after receiving the CITY'S purchase order.

8. Pricing: The prices herein specified are firm for 12 months following execution of this agreement and includes all delivery costs. All prices are exclusive of tax. There is no pesticide fee for ferric chloride solutions. All prices are effective based upon the shipment date of the PRODUCT.

9. Payment: The price for the PRODUCT shall be invoiced in United States currency and will be paid to the SELLER at the address indicated on the SELLER'S invoice. SELLER reserves the right, among other available remedies, either to cancel this contract or suspend further deliveries under this contract in the event the CITY fails to pay for any one shipment when payment becomes due and upon written notice of such failure, the CITY does not pay the balance.

10. Quality: The SELLER agrees that the PRODUCT supplied pursuant to this Agreement shall be free of sediment and solid particles and shall not contain anything that will adversely affect or interfere with normal operation of the City's biological treatment processes or be injurious to the ferric chloride feeding equipment. SELLER further warrants that (A) all PRODUCT shall comply with the Specifications, (B) SELLER has good title to all PRODUCT delivered and all PRODUCT delivered are free from liens and other encumbrances, and (C) SELLER's delivery and installation of the PRODUCT will be in strict conformity with all applicable state, local and federal laws.

The CITY shall be obligated to purchase only that PRODUCT which meets the Specifications and requirements listed above. Any claim that any PRODUCT does not meet Specifications or meet the CITY's requirements shall be deemed waived unless made in writing and received by SELLER within fifteen (15) days from the CITY'S receipt of the PRODUCT in question.

11. Non-Conforming PRODUCT: SELLER shall immediately replace all PRODUCT not meeting Specifications, shall reimburse the CITY for the reasonable shipping costs associated with the CITY'S return of non-conforming PRODUCT, shall pay for the shipping costs associated with delivering to the

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CITY the replacement PRODUCT and shall be responsible for the disposal of any non-conforming PRODUCT and associated containers returned by the CITY. If SELLER, after notice of non-conformity, fails to proceed promptly to provide conforming product, the CITY may perform all work necessary to effectuate such replacement and recover the cost from SELLER.

12. PRODUCT Testing: SELLER shall analyze and retain a clearly-marked, representative sample from each shipment of PRODUCT. SELLER shall retain each sample and such sample's test results for **three (3)** months and, upon written request, shall provide such to the CITY. The parties agree to exercise best efforts in good faith to resolve any discrepancies between their respective test results regarding any sample and/or shipment.

13. Indemnity: To the fullest extent allowed by law, the SELLER and its employees, subcontractors, and agents shall defend, indemnify, and save and hold harmless the CITY, its officers, agents, employees and volunteers from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of SELLER's or its personnel, employees, agents, or subcontractors' willful misconduct or negligent act or omission while engaged in the performance of services described in this Request for Bids and/or pursuant to this Agreement, except those matters arising from the CITY's sole negligence or willful misconduct. The parties intend that this provision shall be broadly construed.

14. Insurance: Prior to beginning the Work and continuing throughout the term of this Agreement, SELLER shall, at SELLER'S sole cost and expense, furnish the CITY with certificates of insurance evidencing that SELLER has obtained and maintains insurance in the following amounts:

A. Workers' Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any CITY-owned or CITY-furnished equipment used or operated by the SELLER, its personnel, agents or subcontractors.

C. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on an occurrence basis and shall name the CITY INDEMNITIEES as additional insureds and any CITY insurance shall be secondary and in excess to SELLER's insurance. If the SELLER's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or

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insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

The CITY Risk Manager, in writing, may approve a variation in the foregoing insurance requirements. A valid and executed approval by Risk Manager must accompany this Purchase Agreement for a variation to be binding.

15. Prevailing Wage: Where applicable, the wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this Purchase Agreement, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, *et seq.* Each laborer, worker or mechanic employed by SELLER or by any subcontractor shall receive the wages herein provided for. The SELLER shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the SELLER to each worker.

An error on the part of an awarding body does not relieve the SELLER from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The CITY will not recognize any claim for additional compensation because of the payment by the SELLER for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the SELLER.

16. Damage To City Facilities: Damage to CITY or public facilities or private property caused by the SELLER in the delivery of the PRODUCT shall be repaired and/or replaced in kind by the SELLER at no cost to the CITY.

17. Force Majeure/Hardship/Other Sources: If the CITY'S ability to take or SELLER'S ability to deliver the PRODUCT is impaired due to circumstances beyond reasonable control, including but not limited to fire, flood, Government action, accident, labor disputes or shortage, or inability to obtain from normal sources raw material, equipment, or transportation, the one so affected shall be excused without liability from taking or making delivery to the extent of such impairment. If SELLER'S ability to deliver PRODUCT is reduced due to any such circumstance, SELLER may reduce the contract quantity in any year upon written notice to the CITY if SELLER deems such reduction necessary to effect a fair allocation of the PRODUCT to users/purchasers thereof, in which case the CITY'S obligation to purchase PRODUCT from SELLER hereunder shall be reduced and adjusted accordingly. Notwithstanding, if SELLER'S ability to deliver PRODUCT is reduced due to any such circumstance, then the CITY may obtain PRODUCT from another source, and the quantity of

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PRODUCT obtained from another source will be credited to any minimum quantity requirement set forth in this Agreement for the respective contract year as if such had been purchased from SELLER. If the CITY'S inability to take PRODUCT is excused under this subparagraph, SELLER'S obligation to sell PRODUCT to the CITY hereunder shall be reduced and adjusted accordingly.

18. Site Safety and Cleanup: The delivery and installation site shall be kept clean and free of hazards at all times during installation. After installation is completed at the site, SELLER shall clean the surrounding area to the condition prior to installation.

19. Period and Renewal: This AGREEMENT is for the period beginning July 1, 2017 and ending June 30, 2018. This AGREEMENT may be extended or amended by mutual agreement in writing between the parties on the same terms and conditions through June 30, 2020 if such mutual agreement is reached before expiration of the current agreement.

20. Notices: All notices concerning the subject matter hereof shall be made in writing and shall be deemed to have been duly given (i) on the date of service if served personally on the party to whom notice is to be given, (ii) on the date of service if delivery is made by overnight courier on the party to whom notice is to be given at the address set forth above, or (iii) five (5) days after the date of depositing the same in the U.S. mail and mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as set forth above. All notices to be given with respect to this Agreement shall be addressed to:

To the City Contract Administrator:

Brian Schumacker, Plant Superintendent
Water Quality Control Plant
195 Belle Air Road,
South San Francisco, CA 94080

To Seller:

Thatcher Company of California, Inc.
Attention: Craig N. Thatcher
P.O. Box 27407
Salt Lake City, UT 84127-0407

21. Entire Agreement: This contract, along with all exhibits attached hereto which are incorporated herein by this reference, sets forth the entire and complete agreement regarding the subject matter hereof and may be executed in identical counterparts.

22. Waivers: Waivers of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

23. Assignment: Neither party shall assign or delegate its rights or obligations under this contract

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without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, should substantially all of the assets of either party be purchased or otherwise acquired by an unrelated entity or person, such party may assign and delegate its rights and obligations hereunder to the acquiring person or entity.

24. Applicable Law: This Agreement shall be construed and enforced in accordance with the laws of the State of California without reference to the conflict or choice of law principles thereof. The jurisdiction for any litigation arising hereunder shall be in the state of California and venue shall be in San Mateo County.

25. Modifications: No modification, waiver, termination, or amendment of this Agreement is effective unless made in writing signed by the City and the SELLER.

26. Attorneys' Fees: If any action at law and equity shall be brought to recover for or on the account of any breach of, or to enforce or interpret any of the covenants, terms or conditions of this contract, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees.

27. Equivalent Pricing: SELLER assures the CITY that it will not offer lower prices to any Municipal entity of comparable volume, shipping distances and like chemistry without adjusting same for the CITY. Due to other existing contractual obligations, there may instances where another like Municipality has a lower price but such contract will not be renewed or re-bid below The CITY'S price, without making an adjustment to the CITY.

28. Severability: If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

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Exhibit A. (Attached): PRODUCT Specifications

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as of this day first written above.

CITY OF SOUTH SAN FRANCISCO:
A Municipal Corporation

SELLER:
Thatcher Company of California, Inc.

By: _____

By: _____

Title: Mike Futrell, City Manager

Title: _____

ATTEST:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT "A"

PRODUCT SPECIFICATIONS

Ferric Chloride Solution:

CAS Number: 7705-08-0

Chemical Formula: FeCl_3

Molecular Weight: 162.20

Specific Gravity (@ 20°C): 1.300 - 1.500

% FeCl_3 : 37% to 42% by weight

% FeCl_2 : <2.5%

%HCl: <1.5%

% Insolubles Less Than <0.25%

Manufactured and Formulated by:

Thatcher Company of California, Inc., Salt Lake City, UT.

Substitutions of PRODUCT of dissimilar nature are not permitted.