

**SECOND AMENDMENT TO CONTRACT RESULTING FROM INVITATION TO BID
NO. 10089682-20-V SODIUM HYPOCHLORITE 12.5% FOR WATER TREATMENT
PROCESS FOR THE PUBLIC UTILITIES DEPARTMENT**

This Second Amendment to Contract Resulting from Invitation to Bid No. 10089682-20-V for Sodium Hypochlorite 12.5% for Water Treatment Process for the Public Utilities Department (Second Amendment) is made and entered into by and between the City of San Diego (City) and JCI Jones Chemicals, Inc. (Contractor), also referred to individually as “Party” and collectively as the “Parties.”

RECITALS

1. City issued Invitation to Bid (ITB) 10089682-20-V, Sodium Hypochlorite 12.5% for Water Treatment Process and accepted Contractor’s bid, resulting in a contract between the City and Contractor (Contract). The Contract is comprised of the ITB and Cover Sheet; the successful bid; the Notice of Intent to Award; any amendments; and the City’s General Contract Terms and Provisions.
2. The City executed a First Amendment on March 7, 2022, to approve price increases submitted by Contractor for the cost of raw materials due to global supply issues.
3. The Contract may be amended by written agreement executed by duly authorized representatives of both Parties.
4. The Parties wish to amend the Contract to allow a temporary price increase for sodium hypochlorite 12.5% due to the ongoing global supply issues which have caused significant increases to the cost of raw materials needed to provide the chemicals to the water treatment plants as required under the existing Contract.

TERMS

This Contract amendment will revise and/or add the following terms to the original Contract:

1. Article III. Compensation. 3.1 Amount of Compensation shall be deleted and replaced in its entirety as follows:

3.1 Amount of Compensation. City shall pay Contractor for delivery of all Services in accordance with this Contract in an amount not to exceed \$38,291,700.00.
2. Article III. Compensation. This Article shall be amended to add a new Section 3.2 as follows:

3.2 Temporary Pricing.

3.2.1 Commencing May 16, 2022, and continuing through June 30, 2022, the pricing of sodium hypochlorite 12.5% shall be \$1.3442 per gallon.

3.2.2 Commencing July 1, 2022 and continuing through September 30, 2022 the pricing of sodium hypochlorite 12.5% shall be \$1.6386 per gallon.

3. Effective October 1, 2022, **ADD** the following new language to Exhibit C. The City of San Diego General Contract Terms and Provisions dated January 16, 2020, Article III. Compensation:

3.5 Price Adjustment for Materials. In the event the Contractor does not request a price increase at the time of the Contract renewal pursuant to Exhibit C, Article III, section 3.4, and the manufacturer(s) that are direct suppliers of raw materials necessary for Contractor to provide the goods and services required under this contract (Materials) subsequently announces a general increase in the price of their Materials, the Contractor may request an increase at that time. The Contractor must provide detailed supporting documentation from the manufacturer to support the requested increase. The requested increase shall not exceed the percentage increase indicated in section 3.4. The requested increase will be evaluated by the City, and the City reserves the right to accept or reject such request. In the event that a requested increase exceeds the amount allowed under section 3.4, the City reserves the right to accept or reject such request. Contractor shall not be entitled to an increase under section 3.4 as long as the Contractor is receiving compensation in accordance with section 3.5.1 below.

3.5.1 Temporary Price increases for Materials. Contractor shall provide written notice to City that the supplier that Contractor directly obtains Materials from for this Contract is increasing the cost for such Materials. The City shall review the notice provided and have the ability to reject or accept such a request for a cost increase for those goods with corresponding line items in the Contract for which the Materials are necessary. If rejected, the contract may be terminated with 60-day written notice, without penalty to either party. If approved, the Contractor shall provide to the City proof every 90 days of the change, if any, in actual amount paid to the supplier of the Materials, to justify their pricing for the next 90 days.-The City has the option to request additional information and conduct market research or benchmarking with other agencies at any time to support a change in price of Materials purchased for this Contract. If approved, City will pay Contractor the price currently in effect plus or minus the actual change in cost, if any, that supplier is charging Contractor for the Materials used to provide goods to the City under this Contract, so long as in doing so, it does not result in the amount paid by City exceeding the amount authorized for compensation to Contractor listed in the Contract in Article III, section 3.1 Compensation. Contractor acknowledges that City cannot pay any amounts exceeding the amount in Article III, section 3.1 unless approved by the City Council. Termination of Temporary Price status will require consent of both parties and

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90-day written notice.

3.5.2 Temporary Price Decrease for Chemicals. If the Cost of the Materials being charged by the supplier to the Contractor for this Contract decrease, then the City will receive the benefit of such price decrease, and the City will pay the price currently in effect minus the actual change in cost. At no time though will the price paid by City to Contractor go below the amount listed in their original bid for this Contract. Termination of Temporary Price status will require consent of both parties and 90-day written notice.

3.5.3 Documentation. Contractor shall provide to City a true copy of suppliers' price change letters (Attachment 1 – Example Supplier Change Letter) on suppliers' letterhead, for the Materials every 90 days, for the next 90-day period. These price change letters will justify the change in price the City will pay Contractor for the goods received during that 90-day period (whether an increase in price, decrease in price, or no adjustment at all). Each 90-days, Contractor shall provide current suppliers' price change letters to the City. If price change letters, or notification that none were received, are not provided timely, the City may withhold payments until receipt of the current 90-day price change letters or notice that none were received.

3.6 Markup. In the event that City and Contractor are operating under section 3.5.1 Temporary Price Increases for Materials, Contractor will be entitled to a **7% markup** on invoices submitted in compliance with sections 3.5.1 through 3.5.3. If City is already paying a markup to Contractor, then this 7% will not be allowed. This markup shall apply only to the cost of the Materials supplied, and not on wages, taxes, or related benefits.

4. This Second Amendment will be retroactively effective to May 16, 2022, once it is signed by both parties and approved by the City Attorney in accordance with Charter section 40.

5. All provisions of the Agreement and First Amendment not addressed in this Second Amendment remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment is executed by City and Contractor acting by and through their authorized officers.

JCI Jones Chemicals, Inc.

By: Summer Mello
Name: Summer Mello
Title: Nat'l Sales Admin
Date: 10/27/22

City of San Diego

By: [Signature]
Name: Matthew Vespi
Title: Chief Financial Officer
Date: 11/1/2022

Approved as to form this 3 day of
November 2022

MARA W. ELLIOTT, City Attorney

By: Melissa Ables
Melissa Ables (Nov 3, 2022 10:52 PDT)
Deputy City Attorney
Melissa Ables
Print Name

Westlake
North American Chlor-Alkali & Derivatives™

July 29, 2022

Dear Customer,

Effective immediately, or when permissible by contract, Westlake Corporation will increase the price for all grades of liquid caustic soda by US\$ 150 per dry short ton in the US and C\$ 215 per dry metric ton in Canada. Westlake Corporation will continue order management for all grades of liquid caustic soda.

Westlake's standard lead times for all caustic shipments continue to be as follows:

Barge	30 days
Rail	14 days
Truck	7 days

If you have any questions regarding this price increase, order management, or lead times please contact your Westlake sales professional. Westlake values your business. Thank you for the opportunity to supply your Liquid Caustic Soda requirements.

Sincerely,

Handwritten signature of David Kokowsky in black ink.

David Kokowsky
Director, Commercial Chlor-Alkali