



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: August 20, 2013

Agenda Item 6H-1
Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Public Works / Utilities
Prepared By: James W. Kaylor, Utilities Manager

Subject: *CONTRACT SERVICE AGREEMENTS BETWEEN SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA) AND MILES CHEMICAL FOR THE DELIVERY OF FERRIC CHLORIDE TO THE MEMBER AGENCIES OF SOCWA.*

Fiscal Impact: None. There is adequate budget available within the Sewer Operating Budget for this annual \$165,000 expenditure.

Summary: The City of San Clemente currently participates in a contract services agreement with the SOCWA for water reclamation treatment plant chemicals. SOCWA member agencies have a long history of partnering to purchase bulk chemical supplies to reduce the cost of chemicals and other supplies. For ferric chloride (which is used as a coagulant in the wastewater treatment process), SOCWA's previous contract cost was \$556.00 per ton. The Encina Wastewater Authority in Carlsbad, California has a competitive existing contract to purchase ferric chloride at a cost of \$549.00 per ton. SOCWA is purchasing ferric chloride at this slightly reduced cost under a State of California "cooperative procurement policy" which allows SOCWA to purchase goods or services using agreements maintained by other public agencies.

Recommended Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to sign the Contract Service Agreement between the SOCWA member agencies and Miles Chemical, Inc. for the delivery and supply of ferric chloride to the member agencies of SOCWA.

Attachments: SOCWA Transmittal Letter and Agreement.

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South Orange County Wastewater Authority

Letter of Transmittal

DATE: June 12, 2013
TO: Bob Gamble
RE: Contract: SOCWA – Ferric Chloride

We are enclosing returning under separate cover:

Sent for your	Status	Please Note
<input type="checkbox"/> Review/Use	<input type="checkbox"/> Preliminary	<input type="checkbox"/> Revisions
<input type="checkbox"/> Approval	<input type="checkbox"/> Revised	<input type="checkbox"/> Additions
<input checked="" type="checkbox"/> Signature	<input type="checkbox"/> Approved	<input type="checkbox"/> Omissions
<input type="checkbox"/> File	<input type="checkbox"/> Released	<input type="checkbox"/> Corrections

Enclosed are two (5) originals signature pages. Please execute/sign each signature page as appropriate in BLUE INK and return the two (5) executed original signature pages in BLUE INK in the self-addressed stamped envelope.

Upon receiving the executed two (5) original signature pages, we will send you a fully executed original of the contract for your records.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Teri Noson
Executive Assistant/Clerk of the Board
SOCWA

COPIES TO: file

6H-2

**CONTRACT SERVICES AGREEMENT BETWEEN THE SOUTH ORANGE COUNTY
WASTEWATER AUTHORITY AGENCIES AND PROVIDER FOR THE DELIVERY AND
SUPPLY OF FERRIC CHLORIDE TO WASTEWATER TREATMENT FACILITIES**

This Agreement is made and entered into this 6th day of June, 2013 ("Effective Date") between on the one hand, the **South Orange County Wastewater Authority** (hereafter "**SOCWA**"), **Santa Margarita Water District** ("**SMWD**"), the **City of San Clemente** ("**CSC**") and, on the other hand, **Miles Chemical** (hereafter "**PROVIDER**"). For purposes of this Agreement, SOCWA, SMWD and CSC are collectively referred to as "SOCWA Entities" and are individually referred to as an "Agency of the SOCWA Entities". SOCWA Entities and PROVIDER may be referred to in this Agreement from time to time as "party" or "parties".

WITNESSETH

WHEREAS, the SOCWA Entities desire to secure contract services for the provision of providing ferric chloride for the referenced treatment facilities; and

WHEREAS, Provider represents that it has the necessary equipment, land, permits, and skills required to perform the necessary contract services.

NOW, THEREFORE, SOCWA, SMWD, CSC and Provider agree as follows:

Section 1. PROVIDER'S SERVICES

1.1 Provider will perform the services under this Agreement for the SOCWA Joint Regional Treatment Plant (RTP), the SOCWA J.B. Latham Plant (J.B. Latham), the SOCWA 3A Plant (3A Plant), the SOCWA Coastal Treatment Plant (Coastal Treatment Plant), the SMWD Chiquita Water Reclamation Facility (SMWD Chiquita WRF) and the City of San Clemente Water Reclamation Plant (CSC WRP). All facilities are collectively referred to as the "SOCWA Entities Facilities". The addresses of the SOCWA Entities Facilities are listed in Exhibit "A" to this Agreement.

1.2 Provider will supply ferric chloride in accordance with the terms of this Agreement to the following SOCWA Entities Facilities with an estimated dry tons per year. This is an estimate of the requirements for the total year and may vary for each facility. (DT/ year = Dry Tons/year)

- SOCWA Regional Treatment Plant (RTP) - 200 DT/year
- SOCWA J.B. Latham (JBL Plant) - 130 DT/year
- Santa Margarita Water District Chiquita WRF- 60 DT/year
- SOCWA 3A Plant - 25 DT/year
- SOCWA Coastal Treatment Plant (CTP) - 50 DT/year
- City of San Clemente Water Reclamation Plant (CSWRP) – 60 DT/year

Ferric chloride orders and deliveries are determined by each facility, according to need. Each facility's delivery schedules will be determined by that facility.

1.3 Provider represents and warrants that it is and will at all times during the performance of this Agreement remain aware of existing, revised, proposed, and new federal, State and local rules and regulations covering its activities in connection with the work (collectively, the "Regulations"). Changes in Provider's practices necessitated by any revision to the Regulations will be brought to the attention of the SOCWA Entities

COPY

for Reference

sufficiently in advance of implementation. SOCWA Entities will not be responsible and has no duty for notifying the Provider of any changes in the Regulations regarding the operation or permitting of the Provider's facility or equipment or Provider's duties and obligations under this Agreement. Changes in any Regulations will not constitute justification for amendments to this Agreement or any alteration or diminution in the duty and responsibility of Provider to provide the required services hereunder.

- 1.4 All equipment utilized in connection with Provider's operation shall be fully licensed by all applicable agencies to operate on the highways of the State of California ("State") and any other states as applicable. Provider shall be responsible for ensuring that all licenses are current. The Provider shall be fully responsible for the proper licensing and training of its personnel. Provider shall produce evidence that Provider's firm has developed programs required under the Omnibus Transportation Employee Testing Act of 1991 as amended and any successor provisions. Provider shall be required to complete a hazardous materials manifest(s) prior to the transportation of every load to SOCWA Entities. The Provider shall be required to submit weight certificates from certified weighers with all bulk shipments.
- 1.5 The Provider shall be responsible for cleaning up and removing all trash, grease, oil and debris that is the result of the specified work. All of the Providers equipment shall be kept clean and shall maintain a neat appearance. Cleaning or servicing of equipment shall not be undertaken at SOCWA Entities Facilities except for emergency repairs. Any spills or discharge at SOCWA Entities Facilities resulting from Provider's operation will be promptly cleaned up by Provider.
- 1.6 The Provider is expected to meet and maintain the minimum ferric chloride specifications specified in Exhibit B throughout the life of the Agreement. To demonstrate compliance with Exhibit B, the Provider shall submit the independent laboratory results of its ferric chloride product specifications to the SOCWA Entities once every quarter (every 90 days). The laboratory results shall be sent directly from an independent laboratory to the SOCWA Entities. The data in the laboratory analysis shall be representative of the quality of the ferric chloride product material that will be received by the SOCWA Entities Facilities in the following quarter. A copy of the laboratory analysis shall be provided by the independent laboratory to each party identified in this Agreement.

Section 2. TERM OF AGREEMENT

- 2.1 The term of this Agreement will be from the Effective Date as first written above until and including one year (the "Term").

Section 3. COMPENSATION FOR SERVICES

- 3.1 Compensation to the Provider will be determined on the following set rates during the Term:

Delivery price to all facilities - \$539 per dry ton (4000 gal min)

The compensation rate above include all product, freight and delivery costs, but exclude all applicable sales taxes which shall be paid by SOCWA.

Section 4.

PAYMENTS FOR SERVICE

4.1 Compensation will be billed monthly by PROVIDER per the SOCWA requested format, and will be based upon the actual ferric chloride delivered during the designated time period. Invoices will include delivery date(s), location of delivery and shall be submitted to the Agency of the SOCWA Entities to where deliveries originated as set forth in Section 8. SOCWA, SMWD, or CSC, respectively, will make payment to PROVIDER within thirty (30) calendar days of receipt and approval of the invoices by such agency, provided all required documentation is attached to such invoices. Each Agency of the SOCWA Entities agrees with the other Agency of the SOCWA Entities that each shall be responsible for payment of the contract services provided by PROVIDER to such Agency's facilities or plants.

For timely payment of Provider's invoices, provide billings to:

For services rendered at the following SOCWA facilities:

- Regional Treatment Plant
- J.B. Latham Plant
- 3A Plant
- Coastal Treatment Plant

Send invoices to: SOCWA
Attn: Accounts Payable
34156 Del Obispo Street
Dana Point, CA. 92629

For services rendered at the City of San Clemente WRP

Send invoices to: City of San Clemente
Attn: _____
380 Avenida Pico, Bldg. N,
San Clemente, CA. 92672

For services rendered at the SMWD Chiquita WRF

Send invoices to: Santa Margarita Water District
Attn: _____
26111 Antonio Pkwy
Rancho Santa Margarita, CA. 92688

4.2 Acceptance and payment by the Agency of the SOCWA Entities for services furnished hereunder, will not in any way relieve the Provider of its responsibility to provide services in strict accordance with federal, State and local laws. Neither an Agency of the SOCWA Entities acceptance of, nor payment for any services will be construed to operate as a waiver of any rights an Agency of the SOCWA Entities have under this Agreement or of any cause of action or claim arising out of the performance of this Agreement.

Section 5.

TERMINATION OF AGREEMENT

5.1 If, during the term of this Agreement, SOCWA, SMWD or esc determines that PROVIDER is not faithfully abiding by any term or condition contained herein, any (or all) such agencies ("affected agencies") may notify PROVIDER in writing of such defect or failure

to perform. Such notice must allow PROVIDER a ten (10) calendar day period thereafter in which to perform services or cure the deficiency related to the affected agency's specified SOCWA Entities Facility(ies) within the specified period. After such 10 day period, if the PROVIDER has not satisfactorily performed the services or cured the deficiency, this will constitute a breach of this Agreement, and the affected agency specified may terminate the Agreement as it applies to such affected agency and such SOCWA Entity agency facility (ies) immediately by written notice to PROVIDER. At such time, neither party will have any further duties, obligations, responsibilities, or rights under this Agreement. In said event, PROVIDER will be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs, up to the day it received the affected agency's notice of termination, minus any offset from such payment representing the affected agency's damages from such breach. In no event, will PROVIDER be entitled to receive in excess of compensation as specified under Section 3 of this Agreement.

Section 6. LIABILITY

- 6.1 PROVIDER is an independent contractor and not an employee of the SOCWA Entities. No permitted or required approval by any of the SOCWA Entities hereunder or in connection with PROVIDER's services will be construed as making the SOCWA Entities responsible for the manner in which PROVIDER performs such services. Such approvals are intended only to give the SOCWA Entities the right to satisfy themselves with the quality of work performed by PROVIDER.
- 6.2 PROVIDER will indemnify, defend and hold harmless the SOCWA Entities, the member agencies of SOCWA, and each of their officers, directors, agents and employees (collectively and individually the "indemnitees"), from and against all claims, demands, losses, damages, costs, expenses, and legal liability arising from, connected with, or resulting from or claimed to have arisen out of, in connection with or resulted from, PROVIDER's services and work hereunder including (a) bodily injury to or death of persons, and personal injury, including but not limited to, third parties and employees, directors and officers the indemnitees, PROVIDER, and third parties, and damage or injury to natural resources (b) violation of any Regulations, including but not limited to strict liability imposed by Regulations; (c) and any other claims, demands, losses, damages, costs, expenses, attorneys' fees and liability connected with or arising from, or as a result of PROVIDER's services or work under this Agreement; excepting only such claims, losses, demands, damages, costs, expenses, attorneys' fees and liability caused by the sole negligence or willful misconduct of the indemnitees. PROVIDER acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out or result from or are in any way connected with the release or spill of any hazardous (as designated under the Regulations) material, by-product or residue as a result of the services or work performed under this Agreement by PROVIDER or its subcontractors are expressly within the scope of this indemnity, and that the costs, expenses, and liability for (a) environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration and remedial work; (b) penalties and fines arising from the violation of the Regulations; and (c) attorneys' fees, disbursements and other response costs, are all expressly within the scope of this indemnity. PROVIDER shall, on the indemnitee's request, defend any action, claim or

suit asserting a claim covered by this indemnity clause. PROVIDER shall pay all costs that may be incurred by the indemnitees in enforcing this indemnity, including reasonable attorney's fees. This indemnity obligation shall survive the termination of this Agreement by any party hereto.

- 6.2A SOCWA shall indemnify SMWD and esc in their individual entity capacities and not as a member agency of SOCWA, and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SOCWA in the performance of this Agreement related to the SOCWA RTP, JBL, 3A Plant and the CTP.
- 6.2B SMWD shall indemnify SOCWA, and its member agencies (excluding SMWD) and CSC and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of SMWD in the performance of this Agreement related to the SMWD Chiquita WRF.
- 6.2C CSC shall indemnify SOCWA, and its member agencies (excluding CSC) and SMWD and each of their respective officers, directors, employees and agents against, and shall hold and save them and each of them harmless from any and all actions, claims, damages to persons or property, penalties, obligations or liabilities of any kind that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, governmental entity or agency or other organization arising out of or in connection with the negligence or willful misconduct of CSC in the performance of this Agreement related to the CSC WRP.

Section 7. INSURANCE

- 7.1 In addition to the requirements set forth below, during the course of the Agreement, PROVIDER will pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of PROVIDER in connection with or related to the services or work provided under this Agreement.
- 7.2 PROVIDER will furnish satisfactory proof by certificate or otherwise as may be required by the SOCWA Entities that it has taken out public or commercial liability and property damage insurance naming the SOCWA Entities, its member agencies, SMWD and CSC, and each of their directors, officers, agents and employees as additional insureds under such policies, in accordance with the terms of this Agreement (see Section 7.5) . PROVIDER shall furnish each individual Agency of the SOCWA Entities herein with certificates of insurance naming each such individual entity as an additional insured.

7.3 The insurance will be comprehensive in form and cover all indemnity and other contractual obligations set forth in this Agreement , and will insure against (1) claims, loss or damages on account of bodily injury and personal injury, including death resulting therefrom, caused or alleged to have been caused directly or indirectly from the performance or execution of this Agreement or performance of services hereunder by PROVIDER, its employees, officers, agents and any subcontractor thereof and (2) claims, loss or damages to any property caused or alleged to have been caused directly or indirectly by the performance or execution of the Agreement or performance of the services hereunder by PROVIDER, its employees, officers, and agents and any subcontractor thereof. Such insurance will also adequately insure against all injury, death, claims, loss, damage or accidents caused by or alleged to have been caused directly or indirectly by the use and operation of automobiles, trucks and/or other mobile or stationary equipment. PROVIDER will maintain worker's compensation insurance, including occupational disease provisions, under the laws of the State or other state (as applicable) and employer's liability insurance for the benefit of its employees. All said public or commercial liability and auto liability and other insurance will be for the period of performance under this Agreement and shall be on a per occurrence basis and any and all aggregate amounts, if applicable, must be stated in the certificates provided hereunder. The amounts of coverage of said insurance will not be less than the following:

INSURANCE COVERAGE	AMOUNT PER OCCURRENCE
<u>General Liability</u> - Bodily, Personal Injury; Property Damage	\$3,000,000
<u>Auto Liability</u> - Bodily , Personal Injury; Property Damage	\$1,000,000
<u>Employers Liability</u> - Bodily Injury by Accident	\$1,000,000
<u>Employers Liability</u> - Bodily Injury by Disease	\$1,000,000

7.4 Said policies will have a clause providing that thirty (30) calendar days written notice by registered mail will be given to the SOCWA Entities prior to any cancellation or amendment to such policies. Such insurance will be issued and underwritten by insurance companies having at least an A- policyholders rating and a financial rating not less than Class VII in accordance with the most current Best's Rating Guide Property/Casualty and which will be admitted and licensed to do business in the State and have an agent for service of process in the State. PROVIDER may satisfy the limit requirements in a single policy or multiple policies, provided, however, that any such additional policies written as excess insurance will not provide any less coverage than that provided by PROVIDER's first or primary policy. All policies of insurance and certificates of insurance showing compliance with the terms of this Section 7 will be

- 8.2 This Agreement represents the entire understanding of the SOCWA Entities and Provider as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties. Provider represents and warrants that its authorized representative has been duly and validly authorized to enter into this Agreement.
- 8.3 The Provider shall not assign this Agreement, nor any part thereof, nor any monies due, or to become due hereunder, without prior written consent of the SOCWA Entities. Any assignment by the Provider without the SOCWA Entities approval shall be cause for termination of this Agreement at the sole option of the SOCWA Entities. In no event shall any contractual relationship be created between any third party and the SOCWA Entities.
- 8.4 In the event an action is filed by either party to enforce any rights or obligations under this Agreement, the prevailing party will be entitled to recover all attorney's fees and court costs, in addition to any other relief granted by the court.
- 8.5 The provisions of this Agreement will be interpreted and enforced in accordance with the laws of the State.
- 8.6 SOCWA and each Agency of the SOCWA Entities acknowledges and agrees with the other Agency of the SOCWA Entities that this Agreement is not intended to establish a joint exercise of powers arrangement under and pursuant to laws of the State with respect to the contractual matters hereunder among such agencies; further, SMWD and CSC each agree that the existing joint powers agreement establishing SOCWA and the joint powers arrangements established pursuant to that agreement, have no bearing or effect on this Agreement and the application thereof to the SMWD Chiquita WRF or the CSC WRP.
- 8.7 This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

BY: _____
 GENERAL MANAGER

Date: _____

APPROVED AS TO FORM:

BOWIE, ARNESON, WILES & GIANNONE
 Legal Counsel - SOCWA

BY: _____
 Patricia B. Giannone

Date: _____

CITY OF SAN CLEMENTE

BY: _____
MAYOR

Date: _____

SANTA MARGARITA WATER DISTRICT

BY: _____
GENERAL MANAGER

Date: _____

PROVIDER

BY: _____
AUTHORIZED REPRESENTATIVE

Date: _____

TITLE: _____

EXHIBIT "A"

SOCWA Facility Addresses

FACILITY ADDRESS PLANT MANAGER PHONE NUMBER

Regional Treatment Plant
29201 La Paz Rd.,
Laguna Niguel, CA. 92677

Bob Waters 949.234.5461

J.B . Latham Plant
34156 Del Obispo,
Dana Point, CA. 92629

Dan Wheeler 949.234.5404

SMWD Chiquita WRP
28792 Ortego Highway
San Juan Capistrano, CA. 92675

Contact: Don Bunts

3A Plant
26901 Camino Capistrano
Laguna Niguel, CA. 92677

Rich Sidlin 949.234.5445

Coastal Treatment Plant
28303 Alicia Parkway
Laguna Niguel, CA. 92677

Hillary Kelly 949.234.5487

City San Clemente WRP
380 Avenida Pico
San Clemente, CA. 92672

Contact: Bob Gamble

Exhibit "B"

FERRIC CHLORIDE Liquid, Standard Grade

Ferric Chloride is an effective primary coagulant in liquid form based on trivalent iron (Fe³⁺) It functions very well for both potable and wastewater clarification and can be used for color removal, phosphate removal, heavy metal removal and lime softening applications. Ferric Chloride can also be used effectively for hydrogen sulfide control, struvite control and in sludge conditioning applications.

PRODUCT SPECIFICATION

Ferric Chloride (FeCl ₃)	38-46%
Fe (II)	< 0.25%
Free HCl	< 0.5%
Water-Insoluble Matter	< 0.1%

TYPICAL ANALYSIS

Total Iron (Fe ^{tot})	13.8 ± 0.7%
Fe (III)	13.8 ± 0.7%
Specific Gravity (68°F)	1.40 avg.