



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: October 17, 2023

Agenda Item: 7J

Department: Public Works/Utilities

Prepared By Julie Schmidt, Management Analyst II

Subject:

CONSIDERATION OF A RESOLUTION AWARDING A PURCHASE CONTRACT TO KAAM GROUP, INC. TO FURNISH AND DELIVER 19% AQUA AMMONIA TO CITY RESERVOIRS 5A, 10, AND 14 FOR AN AMOUNT NOT TO EXCEED \$50,000 FOR A TWO-YEAR PERIOD AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT, AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Fiscal Impact:

The funding for the purchase and delivery of Aqua Ammonia for City Reservoirs 5A, 10, and 14 was approved in the Fiscal Year 2023-24 Budget in the Water Operating Fund, Account Number 052-463-42150 in the amount of \$25,000. Additional funding for the two-year Contract and any extensions will be proposed as part of the City's annual budget process for future fiscal years.

Summary:

The City Council is being asked to consider a two-year Purchase Contract with KAAM Group, Inc. for 19% Aqua Ammonia deliveries to City Reservoirs 5A, 10, and 14 to maintain potable water quality and to authorize the City Manager to approve up to three, one-year extensions to the Contract for amounts not to exceed the approved budget amounts for this chemical in each appropriate fiscal year.

Background:

City Reservoirs 5A, 10, and 14 store potable water and are equipped with a Reservoir Management System (RMS) to improve water quality management throughout the distribution water system. The RMS uses real-time water quality samples from inside the reservoir to measure total disinfectant residual levels. If the system senses a deviation from a predetermined set point disinfectant residual level, the system calls for the injection of Aqua Ammonia and/or Sodium Hypochlorite via conventional chemical metering pumps until proper residual levels are restored. The RMS communicates all system operating parameters, residuals, etc., directly to the City's SCADA system where data is trended and analyzed.

The chemicals Sodium Hypochlorite and Aqua Ammonia are needed onsite at these three reservoirs for the RMS for water treatment, and the City enters into contracts for the purchase and delivery of these chemicals from certified vendors directly to the three sites. Typically, vendors for chemical deliveries utilize 18-wheel trucks, but due to the location and limited access to the reservoir sites, smaller delivery trucks are needed to navigate the narrow access roads and some companies do not have small trucks that are able to access the sites for deliveries.

Utilities staff posted a Request for Bids on the Planet Bids website for a new contract to furnish and deliver 19% Aqua Ammonia since the previous contract has ended. Interested vendors were required to attend a mandatory pre-bid meeting followed by site visits to the three reservoirs to ensure interested vendors could make the necessary deliveries. Staff is not aware of any local companies that could act as vendors.

Following the end of the solicitation on September 28, 2023, the City received two bids from Hill Brothers Chemical Company and KAAM Group. The bid from KAAM Group, a company located in Carlsbad, California was deemed the only responsive bid since they were the only vendor that attended the mandatory pre-bid meeting. Their fixed pricing for the initial two-year contract is \$6.44/gallon. The City's previous contract for Aqua Ammonia deliveries was with KAAM Group and they have provided excellent service to the City and are being recommended for a new contract. The bid from Hill Brothers Chemical Company at \$8.25/gallon was deemed non-responsive since they did not attend the mandatory pre-bid meeting.

Council Options:

- Adopt Resolution No. 23-120, finding the project categorically exempt from the California Environmental Quality Act (CEQA), awarding a contract to KAAM Group, Inc. to furnish and deliver 19% Aqua Ammonia to City Reservoirs 5A, 10, and 14, authorizing the City Manager to execute the contract in an amount not to exceed \$50,000 for a two-year period, and authorizing the City Manager to approve up to three, one-year extensions to the contract for amounts not to exceed the approved budget amounts for this chemical in each appropriate fiscal year.
- Modify and adopt Resolution No. 23-120.
- Continue the item and direct staff to provide additional information.
- Deny Resolution No. 23-120 and deny the approval of the purchase of Aqua Ammonia.

Environmental Review/Analysis:

Staff recommends that the City Council determine this action to be categorically exempt from CEQA under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines. A notice of exemption will be filed with the County of Orange Recorder's Office. (See attachment 3.)

Recommended Actions:

Staff Recommendation

STAFF RECOMMENDS THAT the City Council adopt Resolution No. 23-120, which will:

1. Find the project categorically exempt from CEQA under Class 1 (Existing Facilities, 14 CCR section 15301) of the State CEQA Guidelines;
2. Approve the Purchase Contract with KAAM Group, Inc. to furnish and deliver 19% Aqua Ammonia to City Reservoirs 5A, 10, and 14 for a two-year period not to exceed \$50,000; and

3. Authorize the City Manager to approve up to three, one-year extensions to the Contract for amounts not to exceed the approved budget amounts for this chemical in each appropriate fiscal year.

Attachment:

1. Resolution No. 23-120
2. Purchase Contract with KAAM Group, Inc. to furnish and deliver 19% Aqua Ammonia
3. CEQA Notice of Exemption Form

Notification:

All bidders.

Attachment 1

RESOLUTION NO. 23-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AWARDING A PURCHASE CONTRACT TO KAAM GROUP, INC. TO FURNISH AND DELIVER 19% AQUA AMMONIA TO CITY RESERVOIRS 5A, 10, AND 14 FOR AN AMOUNT NOT TO EXCEED \$50,000 FOR A TWO-YEAR PERIOD, AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AND APPROVE EXTENSIONS TO THE CONTRACT, AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CLASS 1 (EXISTING FACILITIES, 14 CCR SECTION 15301) OF THE STATE CEQA GUIDELINES

WHEREAS, the City of San Clemente provides adequate supplies of potable and recycled water while meeting health and quality standards of the State Water Resources Control Board - Drinking Water Division and Federal Safe Water Drinking Act; and

WHEREAS, City Reservoirs 5A, 10, and 14 for potable water are equipped with a Reservoir Management System (RMS) to improve water quality management. The RMS uses real-time water quality samples from inside the reservoir to measure total disinfectant residual levels. If the system senses a deviation from a predetermined set point disinfectant residual level, the system calls for the injection of Aqua Ammonia and/or Sodium Hypochlorite via conventional chemical metering pumps until proper residual levels are restored; and

WHEREAS, the chemicals Sodium Hypochlorite and Aqua Ammonia are needed onsite at these three reservoirs for the RMS for water treatment, and the City enters into contracts for the purchase and delivery of these chemicals from certified vendors directly to the three sites; and

WHEREAS, Utilities staff posted a Request for Bids for a new contract to furnish and deliver 19% Aqua Ammonia, and the bid received from KAAM Group with fixed pricing for the initial two-year contract of \$6.44/gallon was deemed the only responsive bid since it was the only vendor that attended the mandatory pre-bid meeting; and

WHEREAS, a purchase contract with KAAM Group, Inc. is in the best interests of the City and the public.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby find, determine and resolve as follows:

Section 1. That the above recitals are true and correct and incorporated herein as findings.

Section 2. That this project is categorically exempt from the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities, 14 CCR section 15301) of the State

CEQA Guidelines because it consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use, and there is no reasonable possibility that the activity will have a significant direct or foreseeable indirect effect on the environment.

Section 3. That Purchase Contract is hereby awarded to KAAM Group, Inc. to furnish and deliver 19% Aqua Ammonia to Reservoirs 5A, 10, and 14.

Section 4. That the City Manager is authorized and directed to execute a Purchase Contract with KAAM Group, Inc. for an amount not to exceed \$50,000 for a two-year period in a form substantially similar to that presented to City Council on October 17, 2023. The City Manager is also authorized to approve up to three, one-year extensions to the Contract with KAAM Group, Inc. for amounts not to exceed the approved budget amounts for this chemical in each appropriate fiscal year.

Section 5. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, 2023.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 23-120 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

Attachment 2

CITY OF SAN CLEMENTE

PURCHASE CONTRACT

FURNISH AND DELIVER 19% AQUA AMMONIA

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 2023, by and between the City of San Clemente, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 910 Calle Negocio, San Clemente, California, 92673 ("City"), and **KAAM GROUP, INC.**, a **CALIFORNIA CORPORATION**, with its principal place of business at **300 CARLSBAD VILLAGE DRIVE, SUITE 108A-468, CARLSBAD, CA 92008** ("Supplier").

2. RECITALS.

2.1 City is a municipal corporation of the State of California and operates, among other facilities, **RESERVOIRS 5A, 10, AND 14** located in San Clemente, California (hereinafter referred to as "Facilities").

2.2 City desires Supplier to provide **AND DELIVER 19% AQUA AMMONIA** to City for use at its Facilities.

2.3 Supplier is duly licensed and has the necessary qualifications to fulfill the obligations set forth herein.

2.4 The parties desire by this Agreement to establish the terms for City to purchase and acquire the goods specified herein.

3. TERMS.

3.1 Agreement Duration. This Agreement shall commence **NOVEMBER 1, 2023**, and shall be in effect up to and including **NOVEMBER 1, 2025**. This Agreement may be extend for up to three additional one-year periods upon mutual written agreement of the Parties.

3.2 Method of Ordering. The City shall issue a purchase order(s). The City shall provide Supplier delivery dates by email or telephone, consistent with contact information provided in Paragraph 14.

3.3 Supply and Purchase of Goods. **19% AQUA AMMONIA FOR WATER TREATMENT** supplied, purchased, and delivered under this Agreement ("Goods") shall be in compliance with all applicable laws and regulations. If a chemical, it shall be in compliance with the most current ANSI/AWWA standard for each chemical listed.

3.4 Request for Delivery. On an as needed basis, City shall submit to Supplier a confirmed request for delivery of specific Goods, consistent with contact information provided in Paragraph 15.

3.5 Price. Price for Goods supplied under this Agreement shall be in accordance with Supplier's quotation, attached hereto and incorporated by reference herein as Exhibit "A." The unit price shall be fixed for the first **TWO YEARS** of this Agreement. If the Goods are a chemical(s), except where otherwise noted on Exhibit "A," the unit price shall be based on the price per weight of actual active chemical. The unit price shall be all inclusive of Supplier's profit,

overhead and costs of producing and delivering the Goods. Separate charges for permit fees, regulatory compliance, taxes, fuel, and cleanup will not be accepted. These and all other costs shall be included in the unit price.

There shall be no price increase during the **INITIAL TWO-YEAR** period of contract. Prices may be adjusted in accordance with the terms of this Agreement with each contract **EXTENSION**; however, there shall be no annual increases of greater than 5%.

3.6 Delivery. Supplier shall deliver Goods within three business days of a confirmed request for each delivery. Hours of delivery shall be Monday through Thursday, 8 a.m. to 2 p.m.

3.6.1 Business Hours. Within one month of the execution of this Agreement, Supplier shall submit to the City dates Supplier will not be able to deliver Goods due to planned maintenance, holidays or other events that might affect chemical production or delivery.

3.6.2 Chemical Delivery. All chemical fill connections are two-inch male camlock fittings. Supplier's delivery personnel shall have the applicable adapter/connectors and hoses to complete the chemical delivery. Aqua ammonia deliveries require 2-hour notice to the City prior to arrival.

3.6.3 Minimum Standards. Goods delivered shall meet or exceed all of the current ANSI/AWWA minimum standards.

3.6.4 NSF Certification. The City requires all supplied chemicals to carry NSF 60 certification. "NSF" shall be stamped directly on the delivery paperwork.

3.6.5 Certificate of Analysis. A certificate of analysis (hereinafter referred to as "C of A") is required with each load before the Goods can be unloaded.

3.6.6 Samples. Delivery vehicles shall be equipped to safely provide samples of chemicals, before off-loading.

3.6.7 Weight-Master's Certificate. If the Goods include a chemical, a weight-master's certificate shall be included at the time of delivery. The certificates shall show the weight of the material delivered. If a split transport load is handled, Supplier shall furnish a second weight-master's certificate within one (1) hour of the original shipment.

3.6.8 MSDS. Under this Agreement, a manufacturer's MSDS sheet shall be included with the first delivery of the Goods or after any change in composition of the product, a change in manufacturing process, a change in supplier, or a change in labeling/packaging of the product.

3.6.9 For deliveries of chemicals, **prior** to delivery **and after** the truck has been loaded, all tanker fill/drain accesses shall be sealed with security tags, the serial numbers recorded and emailed to **BurnsideD@san-clemente.org**. Tags removed by an authorized agency (e.g., D.O.T., CHP) shall be replaced with a tag from that agency. Broken tags shall be kept with the delivery truck to be shown to the Filtration Plant personnel prior to discarding.

3.6.10 Location. Deliveries shall be made to:

City of San Clemente
RESERVOIRS 5A, 10, AND 14
Attn: **UTILITIES STAFF**
Reservoir 5A, 721 Ave. Salvador, San Clemente, CA 92672
Reservoir 10, 9 Via Floritas, San Clemente, CA 92672
Reservoir 14, 4159 ½ Costero Risco, San Clemente, CA 92672

3.6.11 Inspection. Delivery does not constitute acceptance. The City reserves the right to inspect any Goods for conformance with the specifications contained herein. Goods discovered to be in noncompliance shall be returned and immediately replaced with conforming Goods at supplier's sole expense. The City shall be reimbursed for any additional cost incurred as a result of Supplier's lack of conformance.

A representative of the City may examine Supplier's inventory and production facilities at any time during the life of this Agreement.

3.6.12 Goods Specification and Quantity Estimate. The City estimates the quantity of Goods to be required for the City's operation of the Facilities as indicated on Exhibit "A," attached hereto and incorporated by reference herein. For chemicals, weights are based on actual active chemical weight. Quantities of Goods listed may be increased or decreased to meet the requirements of the City during the duration of this Agreement. The City does not guarantee a minimum quantity, and the City reserves the right to purchase more or less product units on an as-needed basis.

3.6.13 Personal Protective Equipment (PPE). Supplier shall wear appropriate PPE when taking chemical samples and off-loading product.

3.6.14 Emergency Spill Plan. In the event of accidents or spills on City property, Supplier shall follow the procedures of its Emergency Spill Plan, attached hereto and incorporated by reference herein as Appendix "1." The Emergency Spill Plan shall include, at a minimum, the annual training the delivery driver receives to deal with material spills, emergency equipment the delivery truck has on board, the type and frequency of equipment inspections, emergency contact telephone numbers and names of personnel the City can contact in case of problems.

3.6.15 Security. Due to heightened security measures, Supplier shall be required to email a photocopy of the driver's photo identification, security tag serial numbers and trailer identification no later than two hours before delivery.

Contacts

Dustin Burnside, Utilities Manager
Mark Iverson, Chief Operator

Email

BurnsideD@san-clemente.org
IversonM@san-clemente.org

3.6.16 Safety. All Goods and services furnished, or equipment and PPE used, under this Agreement shall meet or exceed the standards established by the California Occupational Safety and Health Administration and any other applicable federal, state, and local laws, regulations, and ordinances. Supplier compliance shall include, but not be limited to, all relevant U.S. Department of Transportation or Department of Homeland Security regulations pertaining to transportation of hazardous waste, substances and/or materials, as those regulations may be amended from time to time and/or incorporated into state or local laws, regulations and ordinances. If requested, Supplier shall supply to the City information regarding the Supplier's safety ratings, safety audits and implementation of security plans or measures for complying with said regulations.

3.6.17 Termination. The City reserves the right to terminate this Agreement, in whole or in part, with or without cause and at no cost, except for Goods delivered and accepted prior to notice of termination. The City shall notify Supplier no less than 30 days prior to the date of termination of the Agreement. Reasons for termination of the Agreement for cause include, but are not limited to, the following:

- The Goods are not compatible to the Facility's equipment or are not providing acceptable process performance;
- Poor Goods quality;
- Poor or unsafe delivery container quality; and/or
- Failure of Supplier to meet any of the Agreement terms and conditions.

3.6.18 Insurance. Supplier agrees to procure and maintain, at Supplier's expense all insurance specified in Exhibit "B" attached hereto and by this reference incorporated herein. Supplier shall require all subcontractors to carry the same policies and limits of insurance that the Supplier is required to maintain, unless otherwise approved in writing by the City.

3.6.19 Subcontractors. In the event that Supplier employs other suppliers (subcontractors) as part of the work covered by this Agreement, it shall be Supplier's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above.

3.6.20 Hold Harmless and Indemnification. To the fullest extent permitted by law, Supplier agrees to protect, save, defend and hold harmless the City and its officials, officers, agents, employees, and volunteers from any and all claims, liabilities, expenses or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of or in any way connected with the negligent acts, errors or omissions, violations of the law or willful misconduct by Supplier, Supplier's agents, officers, employees, subconsultants, or independent suppliers hired by Supplier under this Agreement. The only exception to Supplier's responsibility to protect, save, defend and hold harmless the City is due to the sole negligence, willful misconduct or active negligence of the City. This hold harmless Agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Supplier.

3.6.21 Notice. Any notice required under this Agreement shall be provided as follows:

City of San Clemente:

380 Avenida Pico, Bldg N
San Clemente, CA 92672

Attn: Julie Schmidt, Management
Analyst II

Supplier:

300 Carlsbad Village Dr., Suite
108A-468, Carlsbad, CA
92008

Attn: Keith Clardy, Chief
Executive Officer

Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

3.6.22 Records. Supplier shall keep and shall preserve for four (4) years after acceptance of the Goods, accurate and detailed records of all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents or records evidencing or relating to the scope

of this Agreement and disbursements charged to the City under this Agreement (collectively, "Books and Records"). Any and all Books and Records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Supplier under this Agreement. During such four (4) year period, Supplier shall give the City and its agents, during normal business hours, access to such Books and Records. The City and its agents shall have the right to make copies of any of the said Books and Records

3.6.23 Compliance with Law. Supplier shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. Supplier is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

3.6.24 Time is of the Essence. Time shall be of the essence as to all dates and times of performance contained in this Agreement. If deliveries are not made at the time agreed upon, the City reserves the right to cancel or to purchase elsewhere and hold Supplier accountable therefor. Supplier shall be liable to the City for any loss or damage caused by Supplier's failure to make timely delivery and/or installation of the Goods, including, without limitation, consequential and incidental damages and costs of obtaining replacement Goods.

3.6.25 Separate Contracts. Supplier understands that this is not an exclusive Agreement and that the City shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by Supplier as the City desires.

3.6.26 Integration. This Agreement represents the entire understanding of the City and Supplier as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

3.6.27 Assignment. Supplier shall not assign any portion of the work to be performed under this Agreement or any of the rights or obligations under this Agreement, without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void. Subject to the foregoing, this Agreement shall be binding upon the heirs, administrators, successors and assigns of the City and Supplier.

3.6.28 Independent Contractor. Supplier shall act as an independent contractor in the performance of this Agreement and in no respect shall Supplier be considered an agent or employee of the City. No provisions of this Agreement shall be intended to create a partnership or joint venture between Supplier and the City and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement.

3.6.29 Laws, Venue and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Orange, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

3.6.30 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Supplier.

3.6.31 Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

3.6.32 Counterparts/Electronic Signature. This Contract may be executed in counterparts, each of which shall constitute an original. This Contract may be executed electronically with the same force and effect as an original ink signature. Bonds, if required, must be signed with original ink signatures and accompanied by notary acknowledgments.

3.6.33 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.6.34 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

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IN WITNESS WHEREOF, this Agreement is executed by the City and by Supplier on the day and year first written above.

CITY OF SAN CLEMENTE

By: _____
Andy Hall, City Manager

ATTEST:

CITY CLERK of the City of
San Clemente, California

Dated: _____, 2023

APPROVED AS TO FORM:

Elizabeth A. Mitchell, City Attorney

**APPROVED AS TO AVAILABILITY
OF FUNDING:**

Finance Authorization

KAAM GROUP, INC.
("SUPPLIER")

By: _____
Keith Clardy, Chief Executive Officer

Dated: _____, 2023

By: _____
Amanda Clardy, Chief Financial Officer

Dated: _____, 2023

EXHIBIT "A"
Product Specification and Quantity Estimate
and
Supplier's Quotation

Supplier shall supply and deliver the product with the specifications and at the price as listed in the attached bid from KAAM Group, Inc. submitted via Planet Bids on September 27, 2023.

EXHIBIT "B"
INSURANCE REQUIREMENTS

1. Insurance.

1.1 Time for Compliance. Supplier shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Supplier shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

1.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Supplier, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Supplier agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); or (3) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(b) Automobile Liability: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence. **NOTE: If Supplier does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Supplier's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; and (2) a non-owned auto endorsement to the Commercial General Liability policy if Supplier uses vehicles of others (e.g., vehicles of employees).

(c) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(d) Pollution Liability: Pollution Liability Insurance covering all of the Supplier's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property

damage, defense costs and cleanup costs with minimum limits of \$2,000,000 per loss and \$4,000,000 total all losses. The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained.

1.3 Endorsements. Required insurance policies shall contain the following provisions, or Supplier shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(a) Commercial General Liability and Pollution Liability:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Supplier; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) Automobile Liability:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) Workers' Compensation:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

1.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents or volunteers shall not contribute with

this primary insurance. Policies shall contain or be endorsed to contain such provisions.

- 1.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.
- 1.6 Evidence of Insurance. The Supplier, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Supplier shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.
- 1.7 Failure to Maintain Coverage. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Supplier or City will withhold amounts sufficient to pay premium from Supplier payments. In the alternative, City may cancel this Agreement.
- 1.8 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A- VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.
- 1.9 Enforcement of Contract Provisions (non estoppel). Supplier acknowledges and agrees that actual or alleged failure on the part of the City to inform Supplier of non-compliance with any requirement imposed no additional obligation on the City nor does it waive any rights hereunder.
- 1.10 Requirements Not Limiting. Requirement of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

Appendix "1"
EMERGENCY SPILL PLAN

Supplier shall comply with the emergency spill plan as set for in the attached bid received from KAAM Group, Inc. submitted via Planet Bids on September 27, 2023.

WORKER'S COMPENSATION INSURANCE CERTIFICATION

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(ONE OF THE BOXES BELOW MUST BE CHECKED)

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated: _____, 20____

Supplier

By: _____

Title

Address

Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Orange

P.O. Box 238

Santa Ana, CA 92702

From: (Public Agency): City of San Clemente

380 Avenida Pico, Bldg N

San Clemente, CA 92672

(Address)

Project Title: Purchase Contract with KAAM Group, Inc. for 19% Aqua Ammonia deliveries to City Reservoirs 5A, 10, and 14

Project Applicant: City of San Clemente Public Works Department

Project Location - Specific:

City Reservoirs 5A, 10, and 14 (see addresses below).

Project Location - City: San Clemente

Project Location - County: Orange

Description of Nature, Purpose and Beneficiaries of Project:

Aqua Ammonia is needed onsite at City Reservoirs 5A, 10, and 14 for the Reservoir Management System for water treatment. Locations: Reservoir 5A, 721 Ave. Salvador, San Clemente, CA 92672; Reservoir 10, 9 Via Floritas, San Clemente, CA 92672; Reservoir 14, 4159 1/2 Costero Risco, San Clemente, CA 92672.

Name of Public Agency Approving Project: City of San Clemente

Name of Person or Agency Carrying Out Project: City of San Clemente

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
Declared Emergency (Sec. 21080(b)(3); 15269(a));
Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
Categorical Exemption. State type and section number: Section 15301, Class 1 Existing Facilities
Statutory Exemptions. State code number:

Reasons why project is exempt:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

Lead Agency

Contact Person: David Rebensdorf, Public Works Director

Area Code/Telephone/Extension: (949) 361-6130

If filed by applicant:

- 1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Date: Title:

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: