

SUPPLY AGREEMENT NO. 1923

Liquid Chlorine in Rail Car

THIS **Liquid Chlorine in Rail Car Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and Brenntag Southwest Inc ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Liquid Chlorine in Rail Car in response to Request for Bid No. **1923** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Supplier agree as follows:

- 1. Scope.** Supplier will provide Liquid Chlorine in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for one year. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$303,288.00, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

4. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Diana Zertuche Garza
Department: Utilities
Phone: (361)-826-1827
Email: DianaG@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Supplier over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Supplier a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and Acceptance.** City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Supplier, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Supplier within 30 days of receipt of City's invoice.

8. **Warranty.**

(A) The Supplier warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Supplier warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Supplier or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or in an attachment to this Agreement. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Supplier and its employees had performed the work.

13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Supplier covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Diana Zertuche Garza
Title: Contract/Fund Administrator
Address: 13101 Leopard Street, Corpus Christi, Texas 78410
Phone: (361)-826-1827
Fax: (361)-826-4488

IF TO SUPPLIER:

Brenntag Southwest Inc
Attn: W. Thomas Crain, Jr.
Title: President
Address: 704 E Wintergreen Rd, Lancaster, Texas 75134
Phone: (713)-330-8570
Fax: (713)-450-4699

17. ***SUPPLIER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS***

AGREEMENT BY THE SUPPLIER OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS. SUPPLIER MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF SUPPLIER UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

18. Termination.

(A) The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Assignment. No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

20. Severability. Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.

- 21. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
- A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Supplier's bid response (Exhibit 2).
- 22. Certificate of Interested Parties.** Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 23. Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Supplier verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
- 24. Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER

Signature: W. Thomas Crain Jr.

Printed Name: W. Thomas Crain, Jr.

Title: President

Date: January 8, 2019

CITY OF CORPUS CHRISTI

Kim Baker
Assistant Director of Finance – Purchasing Division

Date: _____

Attached and Incorporated by Reference:

Attachment A: Scope of Work
Attachment B: Bid/Pricing Schedule
Attachment C: Insurance Requirements
Attachment D: Warranty Requirements

Incorporated by Reference Only:

Exhibit 1: RFB No. 1923
Exhibit 2: Supplier's Bid Response



ATTACHMENT A: SCOPE OF WORK

1.1 General Requirements/Background Information

- A. The Supplier shall supply 90-ton liquid chlorine in rail cars as per Scope of work. Liquid chlorine defined as the commercially available form of liquefied elemental chlorine gas for rail cars.
- B. The liquid chlorine will be use in treatment of potable(drinking) water.
- C. The liquid chlorine must conform to:
 - 1. American National Standards Institute/American Water Works Association Standards for Liquid Chlorine, ANSI/AWWA B301-18 or latest revision.
 - 2. American National Standards Institute/National Sanitation Foundation Institute Standards for Drinking Water Treatment Chemical- Health Effects, ANSI/NSF 60 or latest revision.
 - 3. Conformance to ANSI/NSF 60 or latest revision shall be obtained by certification of this product by an agency recognized by the Texas Commission on Environmental Quality.
- D. The estimated annual requirement for Liquid Chlorine is 1,260 Tons. This is based on treating 27,500,000,000 gallons of water with a dosage of 91.64 pounds per millions of gallons.

1.2 Delivery

- A. The City will place orders for 90-ton liquid chlorine at approximately 30 days intervals throughout the contract period. However, in case of unforeseen circumstance, the City may order extra cars or not place an order in a month.
- B. The Supplier shall deliver the material with lead time of less than or equal to 21 days. In unusual circumstances, the City will accept lead time of 30 days.
- C. Delivery is to be made in a rail car to the City of Corpus Christi O.N Stevens Water Treatment Plant Rail Road Spur, 13101 Leopard St, Corpus Christi, Texas 78469-9277. Delivery hours are to be determined by the Contractor and the rail company.
- D. A Safety Data Sheet (SDS) must be provided to the City prior to shipping the product and along with the product.
- E. The supplier shall provide an affidavit of compliance, by manufacturer, stating that at the time of loading, the liquid chlorine furnished under the release order, complies with all applicable requirements of ANSI/AWWA B301-18 and ANSI/NSF 60 shall be provided to the City of Corpus Christi, Plant Manager, 13101 Leopard St, Corpus Christi, Texas 78469-9277.

1.3 Ownership

City's ownership of the Liquid Chlorine in rail cars shall begin, and supplier ownership shall cease, upon arrival of the rail car at the unloading rack at the O.N Stevens Water Treatment plant.

1.4 Testing

The City of Corpus Christi reserves the right to have the product supplied tested at any time during the Contract period. An independent laboratory would do such testing. Failure to meet specification shall result in the testing rate costs to be borne by the supplier.

1.5 Containers

- A.** The Supplier shall supply Liquid Chlorine in rail cars.
- B.** The Supplier shipping containers for Liquid chlorine shall conform to applicable regulations of the federal, state and Interstate Commerce Commission.
- C.** The Supplier shall send containers that are reconditioned and maintained in accordance with the latest edition of "Container Procedure at Chlorine Packaging Plants" issued by the Chlorine Institute Inc. The Supplier shall carefully examine the container for the leakage, damage and corrosion before delivery.
- D.** All chlorine containers shall have legible tag(s) securely attached which, in addition to the information routinely furnished, shall indicate the following container history:
 - 1. Date of last visual inspection in accordance with Compressed Gas Association, Inc standards.
 - 2. Date the valves were overhauled
 - 3. Date the fuse plugs were tested and/or renewed
 - 4. Date the container was last cleaned

1.6 Inspection

The City of Corpus Christi reserves the right to make unannounced inspection of the supplier's plant and facilities at any time, in order to insure proper cleaning of chlorine containers and proper preventative maintenance and testing of chlorine containers and regulators.

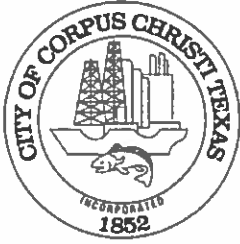
1.7 Safety Measures

- A.** The Supplier shall provide with the following information. The information is to be continually updated as revisions occur during the contract period.
 - 1. Location of nearest emergency station
 - 2. Name of person in charge of emergency crew
 - 3. Telephone number to be called for emergency service and/or normal maintenance
- B.** The Supplier shall assure that in case of emergency condition, trained emergency crews and equipment shall be made available on a 24-hour basis.

- C. The Supplier shall assure that in case of non-emergency condition, remedial maintenance shall be performed on existing problem within 24 hours of a receipt of maintenance problem call.

1.8 Invoicing

- A. Invoicing is to be done for each shipment. The invoice shall include P.O number or supply agreement no, rail car number, ordering agency, unit price and total price.
- B. Original copy of the invoice should be sent to the Accounts Payable with a copy of the Contract Administrator.
- C. Approval of the payment shall be authorized by the Contract Administrator.



CITY OF CORPUS CHRISTI PURCHASING DIVISION BID FORM

**RFB No. 1923
Liquid Chlorine in Rail car**

PAGE 1 OF 1

Date: December 12, 2018

Bidder: Brenntag Southwest, Inc. Authorized Signature: W. Thomas Green Jr.

1. Refer to "Instructions to Bidders" and Contract Terms and Conditions before completing bid.
2. Quote your best price for each item.
3. In submitting this bid, Bidder certifies that:
 - a. the prices in this bid have been arrived at independently, without consultation, communication, or agreement with any other Bidder or competitor, for the purpose of restricting competition with regard to prices.
 - b. Bidder is an Equal Opportunity Employer, and the Disclosure of Interest information on file with City's Purchasing office, pursuant to the Code of Ordinances, is current and true.
 - c. Bidder is current with all taxes due and company is in good standing with all applicable governmental agencies.
 - d. Bidder acknowledges receipt and review of all addenda for this RFB.
 - e. Bidder shall fill **manufacturer name and no of free days for tank cars** blank.

Item	Description	UNIT	QTY	Unit Price	Total Price
i	Liquid Chlorine - 90 Ton in Rail Car Tanks. Manufacturer <u>Occidental Chemical</u> No of Free days for tank cars <u>30</u>	Tons	1260	\$228.80/Ton	\$288,288.00
2	Rail Car Detention charge after free days	Days	200	\$75.00/Day	\$15,000.00
Total					\$303,288.00

ATTACHMENT C: INSURANCE REQUIREMENTS

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administrator one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation **endorsement** is required on GL, AL and WC if applicable. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change, or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000

POLLUTION LIABILITY	\$1,000,000 Per Occurrence
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- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. **ADDITIONAL REQUIREMENTS**

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi

Attn: Risk Manager

P.O. Box 9277

Corpus Christi, TX 78469-9277

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insured's by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2018 Insurance Requirements

Utilities

Chemical Delivery of Chlorine Railcar

06/21/2018 sw Risk Management

Valid Through 12/31/2018

ATTACHMENT D: WARRANTY REQUIREMENTS

No product warranty is required by this Agreement therefore, Section 8 warranty subsections(A) and (B) are null and void.