

## PRODUCT REQUIREMENTS CONTRACT

THIS CONTRACT is made and entered into by and between the CITY OF FRESNO, a California Municipal Corporation, hereinafter called the "CITY," and Brenntag Pacific, Inc., a Delaware Corporation, hereinafter called the "CONTRACTOR," as follows:

1. CONTRACT DOCUMENTS. The "Notice Inviting Bids," "Instructions to Bidders," "Bid Proposal," and the "Specifications" including "General Conditions", "Special Conditions" and "Technical Specifications" for the following: PRODUCT REQUIREMENTS CONTRACT FOR CITRIC ACID (Bid File No. 12401502) copies of which are annexed hereto, together with all the drawings, plans, and documents specifically referred to in said annexed documents, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the estimated monetary consideration of THIRTY THOUSAND FOUR HUNDRED TWENTY FOUR DOLLARS AND SIXTY EIGHT CENTS (\$30,424.68) per year plus annual CPI increases as set forth in the Bid Proposal, CONTRACTOR promises and agrees to furnish or cause to be furnished, in a new and working condition, and to the satisfaction of CITY, and in strict accordance with the Specifications, all of the items as set forth in the Contract Documents.

3. PAYMENT. CITY accepts Contractor's Bid Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. CONTRACTOR agrees to accept electronic payment from the CITY.

4. INDEMNIFICATION: To the furthest extent allowed by law, CONTRACTOR shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. CONTRACTOR'S obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, CONTRACTOR, whenever there is any causal connection between the CONTRACTOR's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, CONTRACTOR expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by CONTRACTOR expressly includes all costs of litigation, attorneys' fees, settlement costs and expenses in connection with claims or

litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to CONTRACTOR as reasonably determined by CITY.

Upon the tender by CITY to CONTRACTOR, CONTRACTOR shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by CONTRACTOR that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and CONTRACTOR fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and CONTRACTOR shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance CONTRACTOR may have procured in a accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Contract, CONTRACTOR shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

///

///

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

<p>CITY OF FRESNO, A California municipal corporation</p> <p>By: _____ Melissa Perales, Purchasing Manager General Services Department</p> <p>APPROVED AS TO FORM: ANDREW JANZ City Attorney</p> <p>By: <u>Jennifer M. Wharton</u> 4/18/2024 Jennifer M. Wharton Date Deputy City Attorney</p> <p>ATTEST: TODD STERMER, CMC City Clerk</p> <p>By: _____ Deputy Clerk Attesting Date</p>	<p>Brenntag Pacific, Inc., A Delaware Corporation</p> <p>By: <u>W. Thomas Crain, Jr.</u> 4/17/2024 Name: <u>W. Thomas Crain, Jr.</u></p> <p>Title: <u>President</u> (If corporation or LLC., Board Chair, Pres. or Vice Pres.)</p> <p>By: _____ Name: _____</p> <p>Title: _____ (If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)</p> <p>REVIEWED BY:</p>
<p>Addresses: CITY: City of Fresno Department of Public Utilities Attention: Cory Asher 5607 W. Jensen Ave Fresno, CA 93706 Telephone: (559) 621-5170 E-Mail: Cory.Asher@fresno.gov</p>	<p>CONTRACTOR: Brenntag Pacific, Inc. Attention: W. Thomas Crain, Jr. President 10747 Patterson Place Santa Fe Springs, CA 90670 Telephone: (562) 903-9626 E-Mail: Tom.Crain@brenntag.com</p>