

**SAN JOSÉ UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION
RESOLUTION 2025-08-22-01**

WHEREAS, the Governing Board of the San Jose Unified School District (District) has installed the Acid Rite AR Equipment System (Acid-Rite System) and the Accu-Tab Power Base System (Accu-Tab System) in its swimming pools at certain District facilities; and

WHEREAS, the Acid-Rite System includes a chemical feed system which District staff has determined is only compatible with Acid-Rite chemical products; and

WHEREAS, the Accu-Tab System requires the use of Accu-Tab chlorine tablets, which is the only product which is both compatible with the Accu-Tab System and available for purchase in the State of California; and

WHEREAS, Axial Water Treatment Products, Inc. (Axial) is the sole authorized Distributor of the required Acid-Rite products (see Exhibit A, attached hereto); and

WHEREAS, in view of the foregoing, the District has obtained a purchase order from Axial in the amount of \$475,000 for the procurement of the necessary Acid-Rite chemical products (See Exhibit B, attached hereto); and

WHEREAS, California law provides that, "Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply" (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694), and that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.); and

WHEREAS, since the Acid-Rite chemical products are the only products on the market which are compatible with the Acid-Rite system, and those products are only available from Axial Water Treatment Products, publicly bidding the purchase of the Acid-Rite Chemicals would be futile and would not serve the purposes of competitive bidding; and

WHEREAS, since the Accu-Tab System requires the use of Accu-Tab chlorine tablets, which is the only product which is both compatible with the Accu-Tab System and available for purchase in the State of California, publicly bidding the purchase of the Acid-Rite Chemicals would be futile and would not serve the purposes of competitive bidding; and

WHEREAS, Meakin v. Steveland (1977) 68 Cal.App.3d 490 and Los Angeles Dredging v. Long Beach (1930) 210 Cal. 348 hold that statutes requiring competitive bidding do not apply when competitive bidding would cause an incongruity or not produce any advantage; and

NOW, THEREFORE, BE IT RESOLVED:

- Section 1.** That all of the recitals set forth above are true and correct, and the Board so finds and determines.
- Section 2.** That it would cause an incongruity and not produce any advantage to the District to competitively bid the purchase of the Acid-Rite chemical products.
- Section 3.** That it would cause an incongruity and not produce any advantage to the District to competitively bid the purchase of the Accu-Tab chlorine tablets.
- Section 4.** That the District authorizes District staff to enter into the attached purchase order with Axial Water Treatment Products.

PASSED AND ADOPTED by the Board of Education of the San José Unified School District, San José, California this 22nd day of August 2024 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

Nancy Albarrán
Superintendent and Secretary
Governing Board of Education

Wendi Mahaney-Gurahoo
President
Governing Board of Education

EXHIBIT “A”

CORRESPONDENCE DATED MARCH 25, 2024 FROM WESTLAKE CHEMICAL



Axiall Water Treatment Products

March 25, 2023

To Whom It May Concern:

This letter is intended to explain Westlake Chemical’s distribution practices through its Authorized Distribution/Dealer network for Accu-Tab® and Acid Rite® products. Westlake Chemical is the sole manufacturer for Accu-Tab and Acid Rite Products made in the USA.

Westlake Chemical’s Authorized Distribution/Dealer network has been appointed to sell, maintain and provide warranty services for the Accu-Tab and Acid Rite products. Authorized Distributors and Dealers receive training in system specification, installation and ongoing service and repair. All Westlake warranties for the Accu-Tab and Acid Rite products are administered through its Authorized Distributor/Dealer Network.

Accu-Tab PowerBase® and Acid Rite AR Equipment Systems are NSF 50 and NSF 51 Listed together for use with the manufactures recommended chemical in Commercial Aquatic applications. The use of any chemical other than the manufactures recommended chemical in the PowerBase and AR chemical feed systems voids the NSF Listing and Westlake warranties. All PowerBase and Acid Rite AR Equipment Systems and replacement parts are available only through Westlake’s Authorized Network.

In California, Westlake Chemical’s sole Authorized Distributor for Accu-Tab Commercial Pool products and Acid Rite PH Adjustment products is Aqua Source, Inc. Aqua Source offers product distribution and technical support throughout the state. Additional questions and concerns can be directed to Westlake Chemical.

John R Fisher
Sales Executive
Axiall Water Treatment Products, a Westlake Company.

EXHIBIT B

PURCHASE ORDER DATED JULY 17, 2024 FOR ACID-RITE CHEMICAL PRODUCTS FROM AXIAL WATER PRODUCTS



**San José
Unified
School District**

Bill To
Accounts Payable
855 Lenzen Avenue
San Jose, CA 95126

Ship To
Maintenance
2222 Unified Way Building M
San Jose, CA 95125

Fiscal Year 2025 Page 1 of 1

THE PURCHASE ORDER NUMBER MUST APPEAR IN ALL INVOICES AND PACKING SLIPS

Purchase Order Number **25100219**
Purchase Order Date **07/17/2024**
Department **MAINTENANCE**

Purchasing: 855 Lenzen Avenue, San Jose, CA 95126
Ph: 408.535.6141

Vendor
AQUA SOURCE
105 ENTERPRISE COURT STE #100
GALT, CA 95632

VENDOR PHONE NUMBER	VENDOR EMAIL	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
(209)745-6401 x152	laurie@aquasource.com	215	25000083	Garcia, Angela	CORP YARD/ALBERT LIZARDE
NOTES					
ITEM #	DESCRIPTION	QUANTITY	UOM	UNIT PRICE	EXTENDED PRICE
1	BLANKET PO FOR MATERIALS AND SUPPLIES AND POOL CHEMICALS IN THE MAINTENANCE DEPT.FY 2024-2025 AUTH BUYERS: ALBERT LIZARDE, LUIS MERCADO, GERALD QUICHOCHO, CHRIS TRAN, FAVIO ACEVEDO, DARREN ACOSTA, JESUS BEAS, CARLOS BEJARANO, RUBEN BERMUDEZ, HAROLD BLACKWOOD, VINCENT CARRILLO, SAMMY COPPOLA, FRANK DANIELE, VITO DE LA PAZ, ISRAEL GOINS, DAVID GUARDADO, ANTONIO HERNANDEZ, ANTHONY HOLGUIN, FIKRET KRAJNIC, CLAY MINTER, CHRIS NEECE, MIKE NGUYEN, THOMAS NGUYEN, CARLOS OCHOA, ADRIAN PANUCO, DAVID PENSTONE, JAMES PHILLIPS, DOUG PINA, JOSE RAMOS, JESSE RUIZ, JOSE SANCHEZ, ROD SPENCER, SERGIO VIVEROS, MIKE WILLIS, DENNY PINI GL # 031-926-220-0000-0-554-4310-0000-8110-	1.0000	EACH	\$59,500.0000	\$59,500.00

IMPORTANT: Read Terms and Conditions provided as part of this purchase order.


SUPERINTENDENT

Total Ext. Price	\$59,500.00
Purchase Order Total	\$59,500.00

TERMS AND CONDITIONS FOR PURCHASE ORDER(S) AND/OR SERVICE AGREEMENT(S)

1. DEFINITIONS "Work" or "Services": All work and services that the Contractor must perform pursuant to this PO. "Site": The site(s) at which the Work must be performed. "Parties": The District and the Contractor.

2. SITE EXAMINATION Contractor has examined the Site and (1) accepts all measurements, specifications and conditions affecting the Work to be performed and (2) warrants that it has examined the Site to the extent it deems necessary for accessibility for materials, workers and utilities, and for protection of existing surface and subsurface improvements. No claim as to undiscovered conditions on the Site will be allowed.

3. EQUIPMENT & LABOR Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material to perform the Work at the times and places directed by and approved by District.

4. SUBCONTRACTORS District reserves the right to approve any subcontractors engaged for any Work. Contractor agrees to bind every subcontractor by the terms of this PO, including, without limitation, indemnification, insurance, and warranty requirements. If Contractor subcontracts any of the Work or Contract, Contractor shall be fully responsible to District for the Work of its subcontractors and persons directly or indirectly employed by them. The Contract shall not create any contractual relationship between any subcontractor and District.

5. TERMINATION District may terminate the Contract immediately upon District's written notice to Contractor. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.

6. CHANGE IN SCOPE OF WORK District shall not accept any change in the scope of Work, performance method, materials, price, or any other matter affecting the Work unless District approves the change in advance by a written, executed change order. Contractor agrees that District may request changes, reductions, or additions to the Work. The Contract Price shall be adjusted by reasonable valuations of the cost. Contractor shall provide District with all information to substantiate the cost whether the Work will be done by Contractor or a subcontractor. Prior to approval of a change order, Contractor shall submit any request for a time extension, and all information substantiating its claim for delay. If Contractor fails to submit a time extension request or all supporting information, it shall have waived any extension.

7. TRENCH SHORING If a Contract for the excavation of a trench deeper than five (5) feet exceeds \$25,000, Contractor shall obtain District's prior acceptance of a detailed plan for shoring, bracing, sloping, or other plan for worker protection from caving. The plan shall be prepared by a registered civil or structural engineer if it varies from shoring system standards.

8. EXCAVATIONS OVER 4 FEET If the Contract includes excavations over four (4) feet, Contractor shall, before the conditions are disturbed, notify District, in writing, of any: (1) Material that may be hazardous waste, as defined in Health & Safety Code § 25117 that must be removed to a Class I, II, or III disposal site in accordance with existing law; (2) Subsurface or latent physical site conditions differing from those indicated; or (3) Unknown or unusual Site conditions. After receipt of Contractor's notice, District shall investigate the conditions, and may issue a change order under the Contract procedures. A District and Contractor dispute as to whether the conditions differ materially, involve hazardous waste, or cause a change in Contractor's cost or time to perform the Work shall not excuse Contractor from a Contract completion date. Contractor shall proceed with all Work until the Contract or law regarding dispute resolution.

9. WORKERS Contractor shall enforce discipline and order among employees performing the Work and shall not employ any person who is unfit or unskilled in assigned Work. Contractor shall dismiss and not reemploy any person whom District deems incompetent or unfit.

10. CORRECTION OF ERRORS Contractor shall perform, at its own cost, without reimbursement from the District, any work necessary to correct errors or omissions caused by Contractor's failure to comply with the standard of care required herein.

11. SUBSTITUTIONS No substitutions of material shall be made without District's prior written approval.

12. CONTRACTOR SUPERVISION Contractor shall provide competent supervision of personnel on the Site and of equipment use.

13. CLEAN UP Contractor shall remove all debris. Contractor shall keep the Site in order at all times when Work is being performed and shall maintain the Site in a reasonably clean condition.

14. ACCESS TO WORK Contractor shall provide the District safe and proper access to all Work at all times.

15. SAFETY; PROTECTION OF WORK & PROPERTY Contractor shall maintain safety in the performance of the Work and shall erect and maintain, as required by conditions and progress of Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of Work or property, Contractor may act to prevent loss or injury. Contractor shall ascertain from District all rules and regulations about safety, security, and driving on school grounds.

16. ASSIGNMENT OF CONTRACT Contractor shall not assign or transfer any of its rights, burdens, duties, or obligations under the Contract without District's prior written consent.

17. TIME IS OF THE ESSENCE Time is of the essence in each Contract provision and condition.

18. OCCUPANCY District may occupy buildings before Contract completion and occupancy shall not constitute acceptance of any Work, nor shall occupancy end the Contract completion date.

19. INDEMNIFICATION To the fullest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, consultants, employees, and volunteers ("Indemnified Parties") from any and all demands, losses, liabilities, claims, suits, and actions ("Claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from performance of the Contract unless Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. District may reject any legal representation that Contractor proposes to defend District.

20. PAYMENT Unless otherwise specified, Contractor shall submit an invoice for materials or Work under the Contract. District shall make payment for materials, supplies or Work in a lump sum within thirty (30) days of (1) completion of Work, and (2) delivery to and approval by authorized District agents of all invoices and evidence required by District. District may deduct from payment amounts to protect District from loss because of: (1) liquidated damages as of date of payment application; (2) sums spent by District performing Contractor's obligations; (3) defective Work not remedied; (4) stop notices; (5) doubt that the Work can be completed for the unpaid Contract balance or by the scheduled completion date; (6) unsatisfactory Contractor Work; (7) unestimated deviations from Contract; (8) Contractor failure to maintain or submit timely, sufficient documentation; (9) false estimates of the value of Work performed; (10) expenses, losses, or damages, determined and incurred by District for which Contractor is liable under the Contract; and (11) any other sums which District may recover from Contractor under the Contract or state law, including Labor Code § 1727. District's failure to deduct from a progress payment shall not waive District's right to such sums. District shall retain 5% from all payments as retention for PO's/contracts in excess of \$25,000. Retention shall be paid pursuant to Public Contract Code §§ 7107 and 7200.

21. PERMITS & LICENSES Contractor and its employees, agents, and subcontractors shall maintain in force, at Contractor's sole cost, all licenses and permits required for furnishing the materials, supplies, or Work.

22. INDEPENDENT CONTRACTOR STATUS While carrying out the Work, Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of District. Contractor is solely responsible for its Worker's Compensation insurance, taxes, and similar obligations. Contractor is liable for its actions, including negligence, gross negligence, and acts or omissions of its agents or employees.

23. ANTI DISCRIMINATION In connection with any District Contract, there shall be no discrimination against any employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor agrees to comply with applicable laws including, but not limited to, the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.) and Labor Code § 1735. Contractor shall require like compliance by all subcontractors.

24. WARRANTY/QUALITY Unless specified otherwise, Contractor, manufacturer, or their assigned agents shall guarantee workmanship, products or Work against defects or failures for a minimum of one (1) year from filing of Notice of Completion or acceptance of Work by final payment or other written form. All Work shall be performed to the standard of care of entities performing similar work for California school districts in or around the same geographic area of the District and all workmanship and merchandise must comply with California energy, conservation, environmental, and educational standards.

25. CONFIDENTIALITY Contractor shall maintain confidentiality of all information, documents, procedures, and other items Contractor encounters while performing Work to the extent allowed by law. This requirement shall survive expiration or termination of the Contract and includes student, parent, and disciplinary information.

26. COMPLIANCE WITH LAWS Contractor shall give all notices and comply with all laws, ordinances, rules and regulations concerning the Work ("Laws"). If Contractor observes that any Work varies from any Laws, Contractor shall notify District, in writing, and, at District's sole option, any necessary changes to the scope of Work shall be made by written change order, or the Contract shall be terminated upon Contractor's receipt of District's written termination notice. If Contractor performs any work that is in violation of Laws, without first notifying District, Contractor shall bear all costs.

27. DISPUTES In the event of a dispute between the Parties as to performance of Work, Contract interpretation, or payment, the Parties shall attempt to resolve the dispute by the procedures set forth in Public Contract Code § 20104 et seq., if applicable. Pending resolution of the dispute, Contractor shall neither rescind the Contract nor stop Work. All claims over \$375,000 may be determined by arbitration if mutually agreeable or by litigation. Written notice of demand for arbitration shall be filed with the other Party to the Contract. A demand for arbitration shall be made within ninety (90) days after written notice, and before Contractor's request for final payment.

28. ANTI-TRUST CLAIM Contractor and its subcontractor(s) assign to District all rights, title, and interest to all causes of action under § 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to a contract or subcontract. This assignment shall become effective when District tenders final payment to Contractor, without further acknowledgment.

29. GOVERNING LAW The Contract shall be governed by and construed in accordance with California laws with venue in the District's County.

30. PROVISIONS REQUIRED BY LAW DEEMED INSERTED Every provision required by law to be in the Contract shall be deemed to be inserted and the Contract shall be read and enforced as though included.

31. BINDING CONTRACT The Contract shall be binding upon the Parties and their successors and assigns, and inure to the benefit of the Parties' successors and assigns.

32. DISTRICT WAIVER District's waiver of any term, condition, covenant ("Term") or of a breach of any Term shall not constitute waiver of any other Term or of a breach of any other Term.

33. INVALID TERM If a Court determines any Contract term to be illegal, invalid or unenforceable ("Illegal Term"), the legality of the remaining terms shall not be affected, and the Illegal Term will not be part of the Contract.

34. ENTIRE CONTRACT This PO and the documents expressly incorporated herein set forth the entire agreement between the Parties and supersedes all prior agreements or understandings between the Parties concerning the subject of this PO. Where a conflict exists between provision(s) in a District-prepared form of agreement that is expressly incorporated into this PO, the provision(s) of that agreement shall control. In all other instances where a conflict exists between the provision(s) of this PO and an incorporated document, the provision(s) of this PO shall control.

35. CONTRACTOR'S INSURANCE Unless specified otherwise, Contractor shall have in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Commercial General Liability insurance: \$2,000,000 for each occurrence and \$4,000,000 general aggregate with Products and Completed Operations Coverage, Automobile Liability/Any Auto: combined single limit of \$1,000,000, Excess Liability insurance: \$4,000,000, Workers Compensation: Statutory limits, and Employers' Liability: \$1,000,000. Contractor shall provide District certificate(s) of insurance and endorsements satisfactory to District. Policy(ies) shall not be modified or terminated and coverage amounts shall not be reduced without thirty (30) days written notice to District. Except for worker's compensation insurance, District, Architect, and the Project Manager (if applicable) shall be named as additional insured(s) on all policies. Contractor's policy(ies) shall be primary, insurance carried by District shall be secondary. Contractor shall not allow any subcontractor, employee, or agent to commence Work until required insurance has been obtained.

36. DELIVERIES Unless otherwise indicated in the PO, the delivery of all materials, equipment, supplies, or other items related to the Work shall be (1) part of the Contract Price, (2) delivered by Contractor at no additional cost to the District, (3) accompanied by all necessary MSDS(s).

37. LABOR CODE REQUIREMENTS If the Contract Price is more than Thirty Thousand Dollars (\$30,000), and the Work is a "public works" as defined in the Labor Code including, without limitation, §§ 1720 - 1720.6 and 1771 then this subsection applies. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations ("DIR"). District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof. Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4. Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1.5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than \$30,000. Copies of the prevailing rate of per diem wages are on file with the District and available on the DIR website. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Certified Payroll Records: Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the District immediately upon request.

38. FINGERPRINTING Contractor shall meet applicable fingerprinting and criminal background investigation requirements of Education Code sections 45125.1 or 45125.2. Contractor shall execute an applicable Fingerprinting/Criminal Background Investigation Certification.

39. LEAD-BASED PAINT Pursuant to the Lead-Safe Schools Protection Act (Ed. Code § 32240 et seq.) and other applicable laws, Contractor shall not use lead-based paint, lead plumbing and solders, or other lead sources. Only trained, state-certified contractors, inspectors and workers shall undertake action to abate existing lead risk factors. Contractor shall execute an applicable Lead-Based Paint Certification.

40. DISABLED VETERAN BUSINESS ENTERPRISES If the District notifies Contractor prior to PO execution, Contractor must submit to District evidence of its efforts to solicit DYVE participation in the Work.

41. WORKERS' COMPENSATION Contractor shall meet applicable codes including Labor Code section 3700. Contractor shall execute an applicable Workers' Compensation Certificate.

The following provision(s) are only applicable to POs for professional services (e.g., architect, construction manager, project manager, etc.)

1. Contractor has in force, and throughout the Work shall maintain with the minimum limits, the following insurance: Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession: \$2,000,000 for each occurrence and \$4,000,000 general aggregate.

The following provision(s) are only applicable to POs for construction

1. **PAYMENT & PERFORMANCE BONDS** Contractor shall not commence Work until it has provided to District, in an acceptable form, a Payment (Labor and Material) Bond (for contracts in excess of \$25,000 and/or as specified in Notice to Bidders or bid/quote request) and a Performance Bond (as specified in Notice to Bidders or bid/quote request), each in an amount equivalent to 100% of the Contract Price issued by a surety admitted to issue bonds in California.