



City Council Agenda Item

City Council Meeting Date: January 6, 2026

TO: Dean Albro, City Manager

FROM: Shaun Ryan, Water Utility Manager
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Jeff Malawy, City Attorney
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SUBJECT: Approval of Revised Purchase Agreement with Imerys Minerals Filtration, Inc. to Purchase Diatomaceous Earth in the Amount of \$548,100

Recommendation:

Staff recommends the City Council:

- 1) Approve the revised contract to purchase annual requirements of diatomaceous earth (estimated to be \$182,700 annually for 270 dry tons per year) from Imerys Minerals Filtration, Inc. (Imerys), for use at the Water Treatment Plant that was awarded by the City Council on November 4, 2025 (Attachment 1); and
- 2) Authorize the City Manager to execute the revised contract with Imerys Minerals Filtration, Inc. for the purchase; and
- 3) Authorize the Purchasing and Materials Manager to issue a purchase order for the revised contract.

Background:

At the November 4, 2025, City Council meeting, the City Council awarded the City's purchase of diatomaceous earth (measured in dry tons) used as a filtration media in the treatment of raw water for potable use by the City's Water Treatment Plant (Plant) to Imerys. After that award, the agreement approved by the City Council was forwarded to Imerys for signature. On December 11, 2025, the City received email correspondence from Imerys forwarding their legal counsel's revisions to the approved agreement. The City Attorney's Office reviewed the changes requested by Imerys and did not recommend approving all of the requested changes. After negotiations with Imerys, the City Attorney's Office and City Manager now recommend a version that will help the City manage the risk associated with this Agreement.

Discussion:

Imerys' contract exceptions included the following: (1) revisions to the warranties and representations (to warrant only that the goods provided would conform to their bid), (2) inclusion of a limitation of liability equal to the contract value, and (3) revisions to the remedies clause to only require replacement of goods that do not meet the warranty.

Subject to City Council approval, City staff has negotiated some revisions based on Imerys' exceptions.

First, staff proposed revisions to the warranties and representations that were less extensive than what was requested by Imerys and these revisions were agreed to by Imerys.

With respect to the limitation of liability, and after discussions with Water Utility operations, the City offered a compromise to limit Imerys' liability to the greater of the insurance coverage required under the Agreement or four times the Agreement value. The City's compromise language excluded indemnity claims from the limitation of liability and also excluded the vendor's obligation to supply replacement goods. Imerys has now agreed to a limitation of liability equal to four times the Agreement value, and that the limitation of liability would not apply to indemnity claims, but requested that the indemnity obligation be limited to third party claims. They also continue to object to excluding the obligation to provide replacement goods from the limitation of liability.

Additionally, the City requested the inclusion of additional language requiring that Imerys provide replacement goods on an expedited basis if needed to avoid a plant shutdown, as opposed to the normal 10-day period. Imerys agreed to this revision.

The City Manager and City Attorney recommend approval of this negotiated version of the Agreement. The biggest risk to the City under the negotiated version of the Agreement is that Imerys will deliver non-conforming goods. Though Imerys' liability for delivering non-conforming goods will be limited if City Council approves the revisions to the Agreement to four times the Agreement price (or \$2,192,400), the limitation of liability is sufficient to manage the potential impacts to the City (see discussion of Fiscal Impact, below) and the City will have the ability to terminate the Agreement for cause or for convenience if Imerys fails to perform in accordance with the Agreement.

As an alternative to approving the recommended revisions, the City Council could direct staff to terminate the negotiations with Imerys and attempt to move forward with an award to the next lowest bidder. The City received three bids, including the bid from Imerys, as follows:

Vendor	Annual Price	Three-Year Price
Imerys	\$182,700	\$548,100
Mar Vista Resources	\$353,655	\$1,060,965
Univar Solutions USA LLC	\$738,690.90	\$2,216,072.70

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Because an award to the next lowest bidder would result in a total cost of almost double the pricing offered by Imerys, City staff recommends City Council approval of the negotiated terms and conditions including the limitation of liability described above. Also, Water Utility staff believe they will be able to effectively monitor the performance of the goods provided under the Agreement to ensure that if goods are delivered that do not meet the Agreement specifications, any affects to operations will be minimized. Lastly, as with all City contracts, if Imerys were to consistently deliver non-conforming goods, the City would have the right to terminate the contract and rebid.

Fiscal Impact:

The amendments made to the contract did not change the purchase parameters. However, there are possible financial ramifications from allowing their limitations especially with respect to liability. Specifically, in the event Imerys provides non-conforming goods, there could be operational impacts to the City's Water Utility. Water Utility staff indicated that in a worst-case scenario situation, the receipt of non-conforming goods could result in the need to replace filters in the final stage of the water treatment process. In a severe situation where the delivery of non-conforming goods goes undetected, that could result in up to \$50,000 in costs to replace 100% of the filters per incident if all filters were impacted and required replacement, however Water Utility staff believe the likelihood of this occurring is minimal.

Conclusion:

Securing a diatomaceous earth purchase order commitment will allow the Water Division to fulfill their mission statement to produce a safe and adequate supply of drinking water to the citizens of Lompoc. Having a firm price for this critical component will provide certainty for the operation of the Plant, which cannot continue without it.

Respectfully submitted,

Shaun Ryan, Water Utility Manager

Jeff Malawy, City Attorney

APPROVED FOR SUBMITTAL TO THE CITY MANAGER:

Michael Luther, Utility Director

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APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Dean Albro, City Manager

- Attachments:
- 1) Revised Contract with Imerys Minerals Filtration, Inc. (Clean version)
 - 2) Redline of Revised Contract with Imerys (with changes tracked from version approved by City Council on November 4, 2025)