



CITY COUNCIL MEETING

Monday, December 16, 2024 at 7:00 PM
Sandy City Hall and via Zoom

AGENDA

TO ATTEND THE MEETING IN-PERSON:

Come to Sandy City Hall (lower parking lot entrance) - 39250 Pioneer Blvd., Sandy, OR 97055

TO ATTEND THE MEETING ONLINE VIA ZOOM:

Please use this link: <https://us02web.zoom.us/j/84220210369>

Or by phone: (253) 215-8782; Meeting ID: 84220210369

PLEDGE OF ALLEGIANCE

ROLL CALL

CHANGES TO THE AGENDA

PUBLIC COMMENT (3-minute limit)

The Council welcomes your comments at this time. The Mayor will call on each person when it is their turn to speak for up to three minutes.

-- If you are attending the meeting in-person, please submit your comment signup form to the City Recorder before the regular meeting begins at 7:00 p.m. Forms are available on the table next to the Council Chambers door.

-- If you are attending the meeting via Zoom, please complete the online comment signup webform by 4:00 p.m. on the day of the meeting: <https://www.ci.sandy.or.us/citycouncil/webform/council-meeting-public-comment-signup-form-online-attendees>.

RESPONSE TO PREVIOUS COMMENTS

CONSENT AGENDA

1. [City Council Minutes: December 2, 2024](#)
2. [Parks and Trails Advisory Board Appointments](#)
3. [Contract Approval: Pump and Pump Cans for Bull Run Supply Pump Station](#)
4. [Contract Approval: Veolia Five-Year Extension; Operations, Maintenance, and Management Services for Drinking Water and Wastewater Treatment Plants](#)

PRESENTATIONS

5. [SandyNet Master Plan Presentation](#)

NEW BUSINESS

6. [Review of Interpretive Signs: Bell Street and 362nd Avenue](#)
7. [IGA Approval: On-Call Construction for SandyNet/CBX Colorado and Gunderson Road Fiber Project](#)
8. [Contract Approval: City of Sandy Door Access System](#)

REPORT FROM THE CITY MANAGER

COMMITTEE / COUNCIL REPORTS

STAFF UPDATES

9. [County Certified Results of 2024 City of Sandy Election](#)

Monthly Reports: <https://reports.cityofsandy.com/>

ADJOURN

Americans with Disabilities Act Notice: Please contact Sandy City Hall, 39250 Pioneer Blvd. Sandy, OR 97055 (Phone: 503-668-5533) at least 48 hours prior to the scheduled meeting time if you need an accommodation to observe and/or participate in this meeting.



CITY COUNCIL MEETING

Monday, December 02, 2024 at 6:00 PM
Sandy City Hall and via Zoom

MINUTES

WORK SESSION – 6:00 PM

1. Wastewater Facility Plan Amendment

The City Manager summarized the staff report that was included in the meeting packet. Members of the project team were present, led by Heather Stephens and Dick Talley with Stantec. Presentation slides were also included in the packet.

Council discussion pertained to the following topics:

- Clarification on WIFIA lending affordability thresholds
- Emphasis on the need for outside funding assistance regardless of which alternative is selected
- Discussion on the maximum amount that can be financed with the current rate model
- Recognition that in the absence of sufficient funding, Sandy will be unable to grow
- Overview of discharge alternatives studied, and the reasons that certain alternatives were not recommended
- Clarification on the new dry weather flow numbers shown
- Discussion of what a collection system storage system would entail
- Discussion of previous discharge location options studied; recognition of the lengthy and difficult process to obtain a new NPDES permit
- Clarification on the improvements needed to the existing treatment plan regardless of the option selected
- Discussion of the costs involved with unlocking 190 additional ERUs
- Discussion on collection system rehabilitation needed regardless of the option selected
- Emphasis on the need to stay in compliance with the City's NPDES permit while the new discharge solution is constructed
- Discussion on the regulatory and legal expenses involved with a Sandy River discharge, and concerns about the length of time and public participation processes that would be necessary
- Discussion about the potential sharing of pipeline capacity in a regional discharge scenario
- Discussion of possible future impacts of installing a pipeline, including spurring future development and creating possibilities for future reimbursement
- Discussion of the possible range of SDC charges that could be involved
- Comparison of the ongoing operations and maintenance costs between possible alternatives, and economies of scale involved with a regional solution
- Clarification on how City SDCs would function after a regional solution is completed

- Emphasis on the relative ease of securing political and financial support for the regional alternative compared to the Sandy River option
- Concerns about the City remaining impacted by the Three Basin Rule
- Suggestion to build a regional pipeline with extra capacity to preserve the possibility of partnering with other agencies
- Discussion on how long the Sandy River NPDES permitting effort should continue
- Note that Gresham needs to update their wastewater facilities plan to determine whether Sandy can be accommodated
- Concern about the length of time required to construct improvements, and the length of time the City's ERUs will remain limited
- Discussion of whether any modifications are possible to dilution ratio requirements
- Suggestion that a record of compliance and progress in accomplishing the facilities plan will improve the City's working relationship with regulators
- Discussion of the fact that continuing to discharge to Tickle Creek over the long term is not viable
- Discussion on the next steps required to finalize and adopt the facilities plan with a preferred alternative

REGULAR MEETING – 7:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT

Mayor Stan Pulliam
 Council President Laurie Smallwood
 Councilor Chris Mayton
 Councilor Rich Sheldon
 Councilor Kathleen Walker
 Councilor Lindy Hanley
 Councilor Don Hokanson

CHANGES TO THE AGENDA

(none)

PUBLIC COMMENT (3-minute limit)

Linda Malone: offered congratulations to the winners of the recent election; noted that in 1919 the Sandy City Council had three female members, which occurred before the enactment of the 19th Amendment; noted that the Council had three female members when she was mayor; noted that as a result of the recent election there will be four female members for the first time, which will constitute a majority

RESPONSE TO PREVIOUS COMMENTS

(none)

CONSENT AGENDA

2. City Council Minutes: November 18, 2024
3. Planning Commission Appointments
4. Resolution 2024-26: Temporary Exception to the City Manager's Signing Authority to Administer On-Call Construction Contracts

MOTION: Adopt the Consent Agenda

Motion made by Councilor Sheldon, Seconded by Councilor Hokanson.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

The Council offered thanks to all who applied for the Planning Commission vacancies.

RESOLUTIONS

5. PUBLIC HEARING – Resolution 2024-25: Amend Master Fee Schedule for Utility Rates

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The City Manager summarized the staff report that was included in the meeting packet. He referred to the presentation slides that were corrected after the previous meeting. He noted that the Alder Creek treatment plant is critical for the city but is not enough to meet peak demand in the summer. With regard to wastewater he noted that the rate model reaches the technical peak of affordability according to official formulas, but that such high costs are realistically infeasible for most families and outside funding assistance is needed. He noted that the City's loans are reimbursement-based and that cash on hand is required for expenditures. He noted the need for a stormwater master plan in the next biennium, and that all the proposed rate increases were included in the current budget.

In response to questions, the City Manager stated that without a rate increase, no additional debt could be secured for projects. Discussion ensued on the amount of revenue the City would expect to collect from projects in the existing development queue, as well as whether the current proposed water rate increase could be spread out over multiple years without impairing the project schedule. It was noted that water revenue is needed without delay to meet the regulatory deadline.

Public Testimony

No testimony was given during the hearing. Kendal Pelton provided testimony via email in advance of the hearing; that testimony **is attached to these minutes.**

Staff Recommendation

Staff recommended approval of the resolution

MOTION: Close the public hearing

Motion made by Councilor Walker, Seconded by Councilor Hokanson.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

Council Discussion

Council discussion pertained to the following topics:

- Acknowledgement that raising rates is unpleasant but necessary
- Discussion of what Portland's wholesale rates will be over the long term; note that the new wholesale agreement does not include a minimum purchase provision
- Details on the portion of water revenue that will go to debt service, and clarification on the timing of when loans will be repaid
- Note that per lender requirements, the City must demonstrate sufficient rate revenue before being approved for new financing that is necessary to complete vital projects
- Discussion regarding the timing of rate adjustments in the winter versus summer

MOTION: Adopt Resolution 2024-25

Motion made by Councilor Hokanson, Seconded by Councilor Sheldon.

Voting Yea: Mayor Pulliam, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

Voting No: Council President Smallwood

MOTION CARRIED: 6-1

6. PUBLIC HEARING – Resolution 2024-24: Extension of Existing Moratorium on Development

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The City Attorney summarized the staff report that was included in the meeting packet.

Public Testimony

(none)

Staff Recommendation

Staff noted the significant progress on wastewater improvements, but recommended approval of the resolution

MOTION: Close the public hearing

Motion made by Councilor Sheldon, Seconded by Councilor Mayton.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

Council Discussion

Council discussion involved a suggestion for a Council discussion in the near future on ERUs and possibilities for updating the ERU allocation provisions in the moratorium before any future extension is considered

MOTION: Adopt Resolution 2024-24

Motion made by Councilor Sheldon, Seconded by Council President Smallwood.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

ORDINANCES

7. PUBLIC HEARING – Ordinance 2024-23: SMC Chapters 1.16 and 1.18 Code Modifications

Abstentions

(none)

Conflicts of Interest

(none)

Staff Report

The Development Services Director summarized the staff report that was included in the meeting packet.

Council Discussion

Council discussion pertained to the following topics:

- Whether gender neutral pronouns are required by the state; the City Attorney advised that the City has discretion on this matter
- Note that the lowest fine amount is \$250
- Discussion on the current implementation of the code with regard to cutting down trees
- Discussion on park exclusions when repeat offences occur; note that additional code modifications on these matters are planned for 2025
- Discussion on the Municipal Judge's discretion on imposing fines

Public Testimony

Linda Malone: asked whether code enforcement is still complaint-driven, or whether staff members are looking for violations. It was noted that the City employs a hybrid balanced approach with the goal of compliance.

Staff Recommendation

Staff noted that fines are a last resort but are sometimes necessary to achieve compliance, which is the City's objective. Staff recommended approval of the ordinance.

MOTION: Close the public hearing

Motion made by Councilor Sheldon, Seconded by Councilor Hanley.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

MOTION: Approve the first reading of Ordinance 2024-23

Motion made by Councilor Hanley, Seconded by Councilor Walker.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

MOTION: Approve the second reading of Ordinance 2024-23

Motion made by Councilor Hokanson, Seconded by Councilor Walker.

Voting Yea: Mayor Pulliam, Council President Smallwood, Councilor Mayton, Councilor Sheldon, Councilor Walker, Councilor Hanley, Councilor Hokanson

MOTION CARRIED: 7-0

REPORT FROM THE CITY MANAGER

- Note that notifications will go out with the next utility bills explaining the reasons for rate increases
- Update on upcoming Winterfest events
- Reminder on the availability of department reports
- Discussion on the need to schedule a date for Council goal setting

COMMITTEE / COUNCIL REPORTS

Councilor Hokanson

- Reminder of the upcoming staff holiday lunch
- Praise for the recent tree lighting
- Suggestion to fix lighting problems at the west entrance to downtown
- Praise for the draft SandyNet Master Plan
- Discussion of the suggestion to increase the number of seats on the SandyNet Advisory Board to accommodate all interested applicants; the consensus of the Council was not to pursue the suggestion at this time

Councilor Hanley

- Praise for the advisory board applicants; suggestion to find ways to ensure they remain engaged

Councilor Walker

- Reminder on the Fire District's upcoming parade and collection
- Review of the Library Advisory Board's recent meeting
- Praise for Cedar Park
- Discussion of the need to better understand consultant calculations of needed utility rates in order to pursue possible future refinement and optimization

Councilor Sheldon

- Recap of the tree lighting event; praise for staff coordination of the flash mob
- Suggestion to organize the City's funding request for the State Legislature's upcoming session

Council President Smallwood

- Overview of recent parks Board interview process
- Praise for Winterfest decorations

Councilor Mayton

- Praise for Winterfest decorations
- Overview of recent Planning Commission meeting, and Commission interview process

Mayor Pulliam

- Recap of the tree lighting event
- Praise for Winterfest decorations, music, and other features
- Reflections on the new Base Camp action sports complex

STAFF UPDATES

Monthly Reports: <https://reports.cityofsandy.com/>

ADJOURN

DRAFT



Jeff Aprati <japrati@ci.sandy.or.us>

Public comment proposed rate increases

K Pelton <k_pelton@hotmail.com>

Mon, Dec 2, 2024 at 3:51 PM

To: "japrati@ci.sandy.or.us" <japrati@ci.sandy.or.us>

Jeff,

I am not able to attend the city council tonight, but would like to add public comment.

I am opposed to any further rate or SDC increases until the city has a proper evaluation done on current state of waste water treatment and what it will cost to make that facility meet current demand and State or Federal regulations. I would also like to see in that report what it would take to have expanded capacity to meet future development. Once that report is presented and accepted by council and tax payers as the progress moving forward, with any grants or additional funding sources in hand, then the city should have a proper assessment presented, with correct data, on how rates for city rate payers should be increased.

There is no clear path for waste treatment, how to get out of the moratorium, or real reason for applicable rate increase to justify a rate increase at this time.

Asking the tax payers to just go along with faulty data, lack of transparency, continuation of work without a clear direction is not acceptable. Increasing rates will impact those already struggling to an unacceptable level.

Please consider pulling all the current SDCs together and presenting as a package. It would be good to know the current rates with proposal on increases with valid justifications on why. This piece meal application doesn't allow citizens to clearly see how council is raising what, when. Even if one of the areas isn't being raised it should be shown for clarity. Using the data presented at last council, it is not acceptable to have a SDC package increase to 66% when our comparable cities are half that. I know SDCs are different than rates, but if trying to say to rate payer the SDCs are \$x so rate payers need to be \$x we need to see them together.

I would also ask that we find a way to reallocate ERUs if developers are just sitting on them when we have other businesses that would like to develop now and put people to work. Asking the newer businesses to go ask a developer for their ERU allocation or part of is NOT acceptable.

We need more transparency from council / city manager on budget. We are paying contractors to do job that aren't being done to properly make changes in our city and that needs to stop.

Kendal Pelton

Kendal



STAFF REPORT

Meeting Type: City Council
Meeting Date: December 16, 2024
From: Rochelle Anderholm-Parsch, Parks and Recreation Director
Subject: Parks and Trails Advisory Board Appointments

DECISION TO BE MADE:

Whether to accept the interview panel's recommendations for appointments to the Parks and Trails Advisory Board.

PURPOSE / OBJECTIVE:

To appoint community members to serve on the Parks and Trails Advisory Board and support the board's mission of guiding the development and maintenance of parks, trails, and recreation opportunities within the City of Sandy.

BACKGROUND / CONTEXT:

The Parks and Trails Advisory Board currently has three seats with terms ending on December 31, 2024. An application opportunity was advertised through the City's usual communication channels. The City received significant interest, with over 11 individuals applying for the positions. Of the 11 applicants, 8 were interviewed by an interview panel consisting of the following members:

- Councilor Laurie Smallwood, Council Liaison
- Councilor Lindy Hanely
- Councilor Kathleen Walker
- Don Robertson, Parks and Trails Advisory Board Chair

The recommended appointees demonstrated strong qualifications, diverse perspectives, and a shared commitment to enhancing the City's parks and trails.

KEY CONSIDERATIONS / ANALYSIS:

- Diversity and Expertise: The nominated candidates bring unique skills and experiences to the board.
- Community Engagement: All candidates expressed a clear understanding of and dedication to serving the community's needs.

- **Efficient Recruitment Process:** The high number of applications and interviews reflects strong community interest and confidence in the recruitment process.

RECOMMENDATION:

The interview panel recommends the appointment of Michael Archer, Ryan Aultman, and Clarissa Flores to the following board seats and terms:

- **Michael Archer** – Seat #1 (term: 01/01/25 – 12/31/2028)
- **Ryan Aultman** – Seat #2 (term: 01/01/25 – 12/31/2028)
- **Clarissa Flores** – Seat #3 (term: 01/01/25 – 12/31/2028)

SUGGESTED MOTION LANGUAGE:

“I move appoint Michael Archer, Ryan Aultman, and Clarissa Flores to the Parks and Trails Advisory Board, as recommended in the staff report.”

LIST OF ATTACHMENTS / EXHIBITS:

- Application forms

Submitted on Friday, November 15, 2024 - 3:54pm

Submitted by anonymous user: 173.241.165.165

Submitted values are:

First Name Michael

Last Name Archer

Email [REDACTED]

Phone Number 503-475-9518

Address 39235 Idleman st

City Sandy

State Oregon

Zip Code 97055

Mailing Address (if different)

Please explain your interest in serving on the Parks and Trails Advisory Board

Would love to help watch my community grow through positive places to play together and share our interests.

What knowledge, education, or skills would you bring to the Board?

I currently work at Wy'East mountain academy and manage the 28 acre facility which is mountain bike trails, skate parks, and dry land ski/snowboard dry land training. I am responsible for all maintenance here. I have also been a part of these industries for 25 years. I live next door to Cedar park and have 4 children that have been brought up through the Sandy school system and have and will continue to graduate with honors.

Upload Current Resume

Interview Availability I understand applicants will be interviewed via Zoom (or by phone) for 15 minutes each on November 18, 2024 in the late afternoon or early evening (exact times TBD), prior to being forwarded to the City Council for appointment consideration.

By checking this box, I agree to the following: I certify that the information contained in this application is correct to the best of my knowledge. I understand that to falsify information is grounds for refusing to appoint me, or for removal should I be appointed. I also affirm that I have read and understand the Sandy Code of Conduct for members of Boards and Commissions (available as a Supporting Document on this webpage), and I understand its application to my role and responsibilities while serving on a City Board. I pledge to conduct myself by the Sandy Boards and Commissions Code of Conduct, and I understand that the City Council may remove me from my position if my conduct falls below these standards.

The results of this submission may be viewed at:

<https://www.ci.sandy.or.us/node/18001/submission/22432>

Submitted on Friday, November 15, 2024 - 8:05am

Submitted by anonymous user: 173.241.164.15

Submitted values are:

First Name Ryan

Last Name Aultman

Email [REDACTED]

Phone Number 503-913-8261

Address 38579 Limerick St

City Sandy

State Oregon

Zip Code 97055

Mailing Address (if different)

Please explain your interest in serving on the Parks and Trails Advisory Board

I am currently serving as seat #2 on the Park and Trails Advisory Board (PTAB) and I would like to continue to serve the community in that role.

What knowledge, education, or skills would you bring to the Board?

As mentioned previously, I've been a board member on the Park and Trails Advisory Board for the past two years, in which I've been an active participant in meetings and committees. In my role as an elementary school teacher and parent of a three year old, I feel that I can bring a unique perspective to board discussions regarding parks and trails.

Upload Current Resume [ryan_aultman_work_resume.docx.pdf](#)

Interview Availability I understand applicants will be interviewed via Zoom (or by phone) for 15 minutes each on November 18, 2024 in the late afternoon or early evening (exact times TBD), prior to being forwarded to the City Council for appointment consideration.

By checking this box, I agree to the following: I certify that the information contained in this application is correct to the best of my knowledge. I understand that to falsify information is grounds for refusing to appoint me, or for removal should I be appointed. I also affirm that I have read and understand the Sandy Code of Conduct for members of Boards and Commissions (available as a Supporting Document on this webpage), and I understand its application to my role and responsibilities while serving on a City Board. I pledge to conduct myself by the Sandy Boards and Commissions Code of Conduct, and I understand that the City Council may remove me from my position if my conduct falls below these standards.

The results of this submission may be viewed at:

<https://www.ci.sandy.or.us/node/18001/submission/22424>

Submitted on Friday, November 15, 2024 - 2:23pm

Submitted by anonymous user: 173.241.163.34

Submitted values are:

First Name Clarissa

Last Name Flores

Email [REDACTED]

Phone Number (503) 803-1215

Address [38525 Pleasant ST](#)

City Sandy

State OR

Zip Code 97055

Mailing Address (if different)

Please explain your interest in serving on the Parks and Trails Advisory Board

Wanting to be more involved in the community as a local business owner and resident.

What knowledge, education, or skills would you bring to the Board?

Bachelors of science in Public Health Administration

Insurance agent business owner

Worked for the tualatin chamber of commerce as an outreach coordinator during the height of the pandemic

Involved in local networking groups such as she connects

Overall helpful people person!

Upload Current Resume [resume.pdf.pdf](#)

Interview Availability I understand applicants will be interviewed via Zoom (or by phone) for 15 minutes each on November 18, 2024 in the late afternoon or early evening (exact times TBD), prior to being forwarded to the City Council for appointment consideration.

By checking this box, I agree to the following: I certify that the information contained in this application is correct to the best of my knowledge. I understand that to falsify information is grounds for refusing to appoint me, or for removal should I be appointed. I also affirm that I have read and understand the Sandy Code of Conduct for members of Boards and Commissions (available as a Supporting Document on this webpage), and I understand its application to my role and responsibilities while serving on a City Board. I pledge to conduct myself by the Sandy Boards and Commissions Code of Conduct, and I understand that the City Council may remove me from my position if my conduct falls below these standards.

The results of this submission may be viewed at:

<https://www.ci.sandy.or.us/node/18001/submission/22428>



STAFF REPORT

Meeting Type: City Council
Meeting Date: December 16, 2024
From: AJ Thorne, Assistant Public Works Director
Subject: Contract Approval: Pump and Pump Cans for Bull Run Supply Pump Station

DECISION TO BE MADE:

Whether to authorize the City Manager to execute a procurement contract for the purchase of Pump and Pump Cans for the Bull Run Supply Pump Station as part of the Portland to Sandy Filtration Plant Transmission System project.

BACKGROUND / CONTEXT:

The Portland Water Bureau (PWB) provides drinking water to several service areas within Multnomah, Washington, and Clackamas counties in Oregon, with the City of Sandy (City) being one of the areas served in Clackamas County. In 2019, the PWB identified the need for a new filtration plant, the Bull Run Filtration Facility (BRFF), to remove potential contaminants, including the microorganism *Cryptosporidium*. The new filtration plant requires the City to stabilize its drinking water supply through a new connection to the Bull Run Supply at the proposed BRFF. This includes the construction of a new pump station and transmission pipeline to convey filtered water from the BRFF to the existing Hudson Road Transmission Main

As part of the effort to stabilize the City’s drinking water supply from the Bull Run Supply, the City will need to construct a pump station which will have the capacity to provide 5 million gallons per day (MGD) of finished water. The pump station will include a dechloramination/disinfection system, and approximately 5,500 feet of 16-inch, Class 52 ductile iron transmission pipeline to provide a connection between PWB’s BRFF and the City’s Revenue Reservoir.

As construction progresses on-site by PWB’s contractor, Kiewit, underground work in the vicinity of Sandy’s proposed pump station is scheduled to begin in the Spring of 2025. It is in the City’s best interest to complete certain tasks while PWB is already performing work on-site, including the installation of pumps and pump cans, to avoid additional, deep re-excavation which will add cost to Sandy’s project. This will require procuring two vertical turbine pumps with motors and four vertical turbine pump cans. The pump cans can then be installed while PWB’s contractors have open excavations on the site.

KEY CONSIDERATIONS / ANALYSIS:

One firm responded to the request for technical and commercial proposals. The proposal was reviewed by the Engineer of Record (Conсор) to confirm technical requirements as well as proposal submittal requirements were met. The bid received was reasonably in line with the engineer's estimate for the procurement cost. The critical timing for delivery of these materials combined with the reasonable pricing does not require this project to be re-bid.

\$410,362 includes the cost items for furnishing and delivering two vertical turbine pumps and four vertical turbine pump cans, as well as provide pump startup services; cost breakdown detailed in **Table 1**.

Table 1: Triangle Pump Contract Summary

Item	Quantity	Unit	Unit Costs	Total Cost
Furnish and deliver vertical turbine pumps	2	Lump Sum	\$159,566.00	\$319,132.00
Furnish and deliver vertical turbine pump cans	4	Lump Sum	\$22,120.00	\$88,480.00
Provide pump startup services	2	Lump Sum	\$2,750.00	\$2,750.00
			Total	\$410,362.00

The selected vendor, Triangle Pump has reviewed and approved the procurement contract. Legal counsel for the City of Sandy have reviewed and approved the invitation to bid prior to issuance, the selection and notification of intent to award, and the final procurement agreement.

BUDGET IMPACT:

Funds for the pump and pump can procurement are identified in the water capital appropriations for the FY23_25 budget and will be financed from the City's Water Fund account.

RECOMMENDATION:

Authorize the City Manager to execute contracts with Triangle Pump & Equipment, Inc. for a maximum total fee of \$410,362.00.

SUGGESTED MOTION LANGUAGE:

"I move to authorize the City Manager to execute a contract with Triangle Pump & Equipment, Inc. for Pump and Pump Can procurement as part of the Portland to Sandy Water Filtration System project, as provided in the meeting packet."

LIST OF ATTACHMENTS / EXHIBITS:

- Triangle Pump & Equipment, Inc. Contract
- Plans and Specifications

SPECIFICATIONS & CONTRACT DOCUMENTS



CITY OF SANDY

Bull Run Supply Pump Station Pump and Pump Can Procurement

VOLUME No. 1 of 1
CITY OF SANDY PROJECT NO. W23001

November 2024



Consor North America, Inc.
One SW Columbia Street, Suite 1700
Portland, Oregon 97204

SECTION 00 01 07 - SEALS PAGE
FOR
BULL RUN SUPPLY PUMP STATION
PUMP AND PUMP CAN PROCUREMENT
FOR
CITY OF SANDY

See Table of Contents for author of each specification section, identified by author's initials as follows:

AUTHOR'S NAME = INITIALS

THOMAS P. BOLAND TPB
EDWARD P. KREIPE EPK



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 BULL RUN SUPPLY PUMP STATION
 PUMP AND PUMP CAN PROCUREMENT
 FOR
 CITY OF SANDY

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END OF SECTION

	City of Sandy	BID ADVERTISEMENT DATE: November 1, 2024
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INVITATION TO BID ON

BULL RUN SUPPLY PUMP STATION PUMP AND PUMP CAN PROCUREMENT

PROJECT No. W23001

<p>Address proposals to: AJ Thorne, Assistant Public Works Director City of Sandy 39250 Pioneer Boulevard Sandy, OR 97055</p> <p>Submit proposals electronically to: portia.inman@stantec.com</p>	<p>Refer all technical questions in writing to: Eddie Kreipe, P.E. Conсор One Columbia Street, Suite 1700 Portland, Oregon 97204 Phone: 503-989-2414 Email: eddie.kreipe@Consoreng.com</p> <p>All questions must be received by 5:00 PM, November 14, 2024</p>	<p>Refer all requests to receive Contract Documents and be placed on the bidder's list by email to: ajthorne@ci.sandy.or.us</p>
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Bids due: By 2:00 PM, November 26, 2024.

Bid proposal packets shall be submitted electronically and shall include one (1) original copy of the bid proposal packet in PDF not exceeding 15 MB via email to portia.inman@stantec.com, no later than 2:00 PM, November 26, 2024. Bids must include the Bid Package Pump and Pump Barrel (Can) Submittal as described in Section 43 21 27 Vertical Turbine Pumps, Can Type, Open Lineshaft. The City of Sandy (Owner) reserves the right to reject any or all bid proposals or cancel this solicitation in the best interests of the Owner.

SECTION 00 01 11 - INVITATION TO BID

**Bull Run Supply Pump Station
Pump and Pump Can Procurement**

Bid proposal packets shall be submitted electronically, and shall include one (1) original copy of the bid proposal packet in PDF not exceeding 15 MB via email to portia.inman@stantec.com, no later than 2:00 PM, November 26, 2024. No bids will be received after **2:00 PM, November 26, 2024**. At **2:00 PM, November 26, 2024**, in person and via Zoom Meeting, bids will be publicly opened and read. The Owner reserves the right to change the date and time for opening bids. All bidders will receive an emailed invite to attend the Zoom Meeting.

The City of Sandy desires to procure two (2) vertical turbine pumps and four (4) vertical turbine pump cans that will be incorporated into their planned Bull Run Supply Pump Station. The four pump cans will be installed by the Portland Water Bureau's (PWB) construction contractor that is currently constructing the Water Bureau's new water filtration facility located along Carpenter Lane in Multnomah County. The City and the PWB have an Inter-Governmental Agreement in place for the PWB's contractor to complete the installation of the four pump cans, along with some other miscellaneous suction piping for the City at their proposed Bull Run Supply Pump Station located on PWB's site. The two vertical turbine pumps will be installed by the City's construction contractor during the full construction of the pump station project that is anticipated to go out for public bids in spring of 2025.

This Project is anticipated to be partially funded by the United States Environmental Protection Agency (EPA)'s Water Infrastructure Finance and Innovation Act (WIFIA). As such, all work on this Project is subject to the Federal American Iron and Steel (AIS) requirements, as well as all other WIFIA requirements. Materials specified to be incorporated into this Project shall meet the AIS requirement of P.L. 113-76, Consolidated Appropriations Act, 2014. The Contractor awarded the Project shall adhere to all requirements stated within the Specifications and other WIFIA requirements. Each bid form shall include specific acknowledgment, in the space provided, of bidder's understanding of the WIFIA funding requirements. Failure to so acknowledge may result in the bid being rejected as not responsive.

Copies of the Invitation to Bid and Contract Documents for this equipment procurement may be obtained electronically only. Plans and Specifications are available for download at no charge from the City's website at <https://www.ci.sandy.or.us/rfps>. Each bid form shall include specific acknowledgment, in the space provided, of receipt of all addenda issued by the Owner during the bidding period. Failure to so acknowledge may result in the bid being rejected as not responsive.

The Project is a public works project as defined in ORS 279C. Prevailing Wage Rates and Davis-Bacon Wage Rates will apply for this Project. Bidders shall comply with the requirements of those statutes and codes.

The Owner reserves the right to reject any and all bids not in compliance with all prescribed public bidding procedures and requirements and to reject for good cause any or all bids upon a finding of the Owner that it is in the public interest to do so. Bidders are solely responsible for all of their costs incurred in preparing and submitting a bid.

Bidders must be a registered Supplier by the State of Oregon, hold all other necessary licenses, and be qualified in accordance with the applicable portions of ORS 279C in order to enter into a contract with the Owner for material procurement agreement project in Oregon.

CITY OF SANDY
 AJ Thorne, Assistant Public Works Director
 Dated: November 1, 2024

BID PROPOSAL INSTRUCTIONS AND PROJECT SCHEDULE

Bid Proposal Title: Bull Run Supply Pump Station Pump and Pump Can Procurement

SCHEDULE OF EVENTS:

Release Invitation to Bid documents	November 1, 2024
Deadline to Ask Questions	November 14 2024, at 5:00 PM
Deadline to Protest Invitation to Bid Materials	November 15, 2024, at 5:00 PM
Deadline for Proposal Submission/Bid Opening	November 26, 2024, at 2:00 PM
Notice of Intent to Award Distributed (tentative)	December 2, 2024
City of Sandy Approval (tentative)	January 6, 2025
Notice of Award Distributed (tentative)	January 7, 2025
Commencement of Contract (tentative)	November 21, 2025
Required Delivery of Pump Cans	March 1, 2025

City of Sandy reserves the right to modify this schedule of events at any time in the best interests of the City of Sandy. Any changes to the schedule occurring before bid opening will be issued within an addendum.

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**SECTION 00 21 13.13 - INSTRUCTIONS TO BIDDERS
FOR
BULL RUN SUPPLY PUMP STATION
PUMP AND PUMP CAN PROCUREMENT
FOR
CITY OF SANDY**

PART 1 DEFINED TERMS

- 1.1 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. Apparent Low Bidder – that Bidder whose Bid as offered in the Bid Form represents the lowest total as determined by the Lump Sum Bid.
 - B. First-Tier Subcontractor - an individual, firm or corporation having a direct contract with the Seller for furnishing labor or furnishing labor and materials in connection with the performance of a part of the work and will have a contract value that is equal to or greater than five percent of the total bid project or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.
 - C. Issuing Office—The office and/or website from which the Bidding Documents are to be issued, and which registers plan holders.
 - D. Lump Sum Bid – Bid for Lump Sum Work including indicated Base Bid Major Equipment items listed on the Major Equipment Schedule.
 - E. Successful Bidder – the lowest, responsible Bidder with a responsive Bid to whom Buyer (on basis of Buyer’s evaluation as hereinafter provided) makes an award.

PART 2 BIDDING DOCUMENTS

- 2.1 Bidder shall obtain a complete set of Bidding Requirements and proposed Contract Documents (together, the Bidding Documents). See the Agreement for a list of the Contract Documents. It is Bidder’s responsibility to determine that it is using a complete set of documents in the preparation of a Bid. Bidder assumes sole responsibility for errors or misinterpretations resulting from the use of incomplete documents, by Bidder itself or by its prospective Subcontractors and Suppliers.
- 2.2 Bidding Documents are made available for the sole purpose of obtaining Bids for completion of the Project and permission to download or distribution of the Bidding Documents does not confer a license or grant permission or authorization for any other use. Authorization to download documents, or other distribution, includes the right for plan holders to print documents solely for their use, and the use of their prospective Subcontractors and Suppliers, provided the plan holder pays all costs associated with printing or reproduction. Printed documents may not be re-sold under any circumstances.

- 2.3 Copies of the Invitation to Bid and Contract Documents for this equipment procurement may be obtained electronically only. Plans and Specifications are available for download at no charge from the City's website at <https://www.ci.sandy.or.us/rfps>.
- 2.4 Bids shall be submitted on unaltered Bid Forms furnished by the Buyer, or on exact duplicates thereof. Bids shall be made in accordance with all instructions, requirements and specifications to be considered. All blanks on Bid Forms shall be completed in ink or typewritten. Alterations and erasures shall be initialed by the signatory of the Bid. Bidder shall not make their Bid contingent upon the Buyer's acceptance of specifications, plans or contract terms that conflict with or are in addition to those in the Invitation to Bid documents.
- 2.5 Bids shall be digitally signed or a copy signed in ink, with the signer's name typed or printed in the space provided. Where Bidder is a corporation, Bids shall be signed with the legal name of the corporation and the legal signature of an officer authorized to bind the corporation to a contract. At least one Bid submitted by Bidder must bear an original signature.
- 2.6 Electronic Documents
- A. When the Bidding Requirements indicate that electronic (digital) copies of the Bidding Documents are available, such documents will be made available to the Bidders as Electronic Documents in the manner specified.
1. Bidding Documents will be provided in Adobe PDF (Portable Document Format, .pdf). It is the intent of the Engineer and Buyer that such Electronic Documents are to be exactly representative of the paper copies of the documents. However, because the Buyer and Engineer cannot totally control the transmission and receipt of Electronic Documents nor the Bidder's means of reproduction of such documents, the Buyer and Engineer cannot and do not guarantee that Electronic Documents and reproductions prepared from those versions are identical in every manner to the paper copies.
- B. Unless otherwise stated in the Bidding Documents, the Bidder may use and rely upon complete sets of Electronic Documents of the Bidding Documents, described in Paragraph 2.4.A above. However, Bidder assumes all risks associated with differences arising from transmission/receipt of Electronic Documents versions of Bidding Documents and reproductions prepared from those versions and, further, assumes all risks, costs, and responsibility associated with use of the Electronic Documents versions to derive information that is not explicitly contained in printed paper versions of the documents, and for Bidder's reliance upon such derived information.
- C. After award and per the process described in Section 01 33 00 - Submittals of the technical specifications, Engineer can provide Electronic Documents in native file formats that were developed by Engineer as part of the Project design process for the use of the Successful Bidder (Supplier).
1. Release of such documents will be solely for the convenience of the Supplier. No such document is a Contract Document.
 2. Supplier is not entitled to rely on the availability or accuracy of such information in the preparation of its Bid or pricing of the Work. In all cases, the Supplier shall take appropriate

measures to verify that information provided in Electronic Documents is appropriate and adequate for the Supplier's specific purposes.

3. In no case will the Seller be entitled to additional compensation or time for completion due to any differences between the actual Contract Documents and any related Electronic Documents in native file format.

PART 3 BIDDER RESPONSIBILITY CRITERIA AND OTHER REQUIREMENTS

3.1 Bidder Responsibility. It is the intent of Buyer to award a contract to the lowest responsible Bidder. Before award, the Bidder must meet the following Bidder responsibility criteria to be considered a responsible Bidder. The Bidder may be required by the Buyer to submit documentation demonstrating compliance with the criteria. The Bidder must fully complete and return the Bidder Responsibility Document in order for the Buyer to determine its responsibility. Submission of a signed Bid shall constitute approval for the Buyer to obtain any information that the Buyer deems necessary to conduct the evaluation.

3.2 Request to Change Criteria During Bidding:

Bidders with concerns about the relevancy or restrictiveness of the Supplemental Bidder Responsibility Package required in these bidding documents may make or submit requests to the Buyer to modify the criteria. Such requests shall be in writing, describe the nature of the concerns, and propose specific modifications to the criteria that will make the criteria more relevant and/or less restrictive of competition. Bidders must submit such requests to the Buyer and Engineer no later than ten (10) business days prior to the bid submittal deadline and address the request to AJ Thorne, Assistant Public Works Director at ajthorne@ci.sandy.or.us and Eddie Kreipe, P.E. at eddie.kreipe@consoreng.com.

PART 4 BIDDER'S REPRESENTATIONS AND CERTIFICATIONS

4.1 Express Representations and Certifications in Bid Form, Agreement

- A. The Bid Form that each Bidder will submit contains express representations regarding the Bidder's examination of Project documentation, and preparation of the Bid, and certifications regarding lack of collusion or fraud in connection with the Bid. Bidder should review these representations and certifications and assure that Bidder can make the representations and certifications in good faith, before executing and submitting its Bid.
- B. If Bidder is awarded the Contract, Bidder will make similar express representations and certifications when it executes the Agreement.

PART 5 INTERPRETATIONS AND ADDENDA

5.1 Buyer on its own initiative or upon request from a Bidder may issue Addenda to clarify, correct, supplement, or change the Bidding Documents. All Bidder questions must be received by the deadline identified in the Invitation to Bid schedule.

- 5.2 Bidder shall submit all questions about the meaning or intent of the Bidding Documents to Buyer and Engineer in writing and address the request to AJ Thorne, Assistant Public Works Director at ajthorne@ci.sandy.or.us and Eddie Kreipe, P.E. at eddie.kreipe@consoreng.com.
- 5.3 Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all registered plan holders. Questions received less than seven (7) days prior to the date for opening of Bids may not be answered.
- 5.4 Only responses set forth in an Addendum will be binding. Oral and other interpretations or clarifications will be without legal effect. Responses to questions are not part of the Contract Documents unless set forth in an Addendum that expressly modifies or supplements the Contract Documents.

PART 6 BID SECURITY

- 6.1 A Bid must be accompanied by Bid Security made payable to Buyer in an amount of no more than (10) percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid Bond issued by a surety meeting the requirements of Paragraph 6.01 of the General and Supplementary Conditions. Such Bid Bond will be issued in the form included in the Bidding Documents.
- A. Bidder shall deliver to the Buyer a hard copy of the original Bid Bond within 48 hours of the Bid Opening.
- 6.2 The Bid Security of the Apparent Low Bidder will be retained until Buyer awards the contract to such Bidder, and such Bidder has executed the Contract, furnished the required Contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract and furnish the required Contract security within fifteen (15) days after the Notice of Award, Buyer may consider Bidder to be in default, annul the Notice of Award, and the Bid Security of that Bidder will be forfeited, in whole in the case of a penal sum bid bond. Such forfeiture will be Buyer's exclusive remedy if Bidder defaults.
- 6.3 The Bid Security of other Bidders that Buyer believes to have a reasonable chance of receiving the award may be retained by Buyer until the earlier of ten (10) days after the Effective Date of the Contract or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 6.4 Bid security of other Bidders that Buyer believes do not have a reasonable chance of receiving the award will be released within seven (7) days after the Bid opening.

PART 7 CONTRACT TIMES

- 7.1 The number of days within which, or the dates by which, the Work is to be (a) substantially completed and (b) ready for final payment, and (c) Milestones (if any) are to be achieved, are set forth in the Agreement.
- 7.2 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

PART 8 MATERIAL & EQUIPMENT

- 8.1 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Supplier to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 8.2 All prices that Bidder sets forth in its Bid will be based on the presumption that the Supplier will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

PART 9 PREPARATION OF BID

- 9.1 The Bid Form is included with the Bidding Documents. All blanks on the Bid Form must be completed. A Bid price must be indicated for each section, Bid item, alternate, adjustment unit price item, and price item listed therein.
- 9.2 If Bidder has obtained the Bidding Documents as Electronic Documents, then Bidder shall prepare its Bid on a copy of the Bid Form from the Electronic Documents version of the Bidding Documents. The Bid Form must be clearly legible and as closely identical in appearance to the Electronic Document version of the Bid Form as may be practical. The Buyer reserves the right to accept Bid Forms which nominally vary in appearance from the original version of the Bid Form, providing that all required information and submittals are included with the Bid.
- 9.3 A Bid by a corporation must be executed in the corporate name by a corporate officer (whose title must appear under the signature). The corporate address and state of incorporation must also be shown.
- 9.4 A Bid by a partnership must be executed in the partnership name and signed by a partner (whose title must appear under the signature). The official address of the partnership must be also shown.
- 9.5 A Bid by a limited liability company must be executed in the name of the firm by a member or other authorized person. The state of formation of the firm and the official address of the firm must also be shown.
- 9.6 A Bid by an individual must show the Bidder’s name and official address.
- 9.7 A Bid by a joint venture must be executed by an authorized representative in the manner indicated on the Bid Form. The joint venture must have been formally established prior to submittal of a Bid, and the official address of the joint venture must also be shown.
- 9.8 All names must be printed below the signatures.
- 9.9 Bidder, at City’s request, must provide evidence of Bid signatory’s authority to authority to sign the Bid Form.

- 9.10 The Bid must contain an acknowledgment of receipt of all Addenda, the numbers of which must be filled in on the Bid Form.
- 9.11 Postal and email addresses and telephone number for communications regarding the Bid must be shown.
- 9.12 Work to be performed under the contract will not require the Bidder or any subcontractors to be licensed for asbestos abatement work under ORS 468A.720.
- 9.13 The Bid must include the **Bid Package Pump and Pump Barrel (Can) Submittal** as described in Section 43 21 27 Vertical Turbine Pumps, Can Type, Open Lineshaft.

PART 10 BASIS OF BID

10.1 Unit Price Bid

- A. Bidders must submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity”, which Buyer or its representative has set forth in the Bid Form, for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Buyer for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

PART 11 SUBMITTAL OF BID

- 11.1 The Bid Form, Bid Security and the other documents required are to be submitted under the terms of Article 2 of the Bid Form.
- 11.2 Bids will only be accepted electronically. Bids must be received no later than the date and time prescribed and at the place indicated in the Invitation to Bid.
- 11.3 Bids must include the **Bid Package Pump and Pump Barrel (Can) Submittal** as described in Section 43 21 27 Vertical Turbine Pumps, Can Type, Open Lineshaft.
- 11.4 Bids received after the date and time prescribed for the submission of bids, or not submitted at the correct location or in the designated manner, will not be accepted.
- 11.5 Bidder shall complete and submit the following attachments with its Bid, or within the time required after the published bid submittal time (consistent with ORS 279C):
- A. Bid Security

PART 12 MODIFICATION AND WITHDRAWAL OF BID

- 12.1 A submitted electronic Bid may be withdrawn prior to the date and time for the opening of Bids.
- 12.2 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.1 and submit a new Bid prior to the date and time for the opening of Bids.
- 12.3 If within three (3) hours after Bids are opened any Bidder files a duly signed written notice with Buyer and promptly thereafter demonstrates to the reasonable satisfaction of Buyer that there was a material and substantial mistake in the preparation of its Bid, the Bidder may request to withdraw its Bid, and if accepted, Bid security will be returned. Thereafter, if the Work is rebid, the Bidder will be disqualified from further bidding on the Work.

PART 13 OPENING OF BIDS

- 13.1 Bids will be opened at the time and place indicated in the Invitation to Bid and, unless obviously non-responsive, announced as indicated in the Invitation to Bid. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

PART 14 BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 14.1 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Buyer may, in its sole discretion, release any Bid and return the Bid Security prior to the end of this period.

PART 15 EVALUATION OF BIDS AND AWARD OF CONTRACT

- 15.1 Buyer reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Buyer also reserves the right to waive immaterial irregularities as an informality. Irregularities involving price, time, or changes in the Work are not generally material.
- 15.2 Buyer will reject the Bid of any Bidder that Buyer finds, after reasonable inquiry and evaluation, to not be responsible.
- 15.3 Buyer reserves the right to reject any Bid not in compliance with all prescribed public bidding procedures and requirements.
- 15.4 Buyer reserves the right to reject Bids based upon Buyer's finding that the Bidder (a) has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries; or
- 15.5 If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, whether in the Bid itself or in a separate communication to Buyer or Engineer, then Buyer will reject the Bid as nonresponsive.
- 15.6 If, at the time the contract is to be awarded, the total of the lowest acceptable Bid exceeds the funds then estimated by the Buyer as available, the Buyer may reject all Bids or take such other action that best serves the Buyer's interests.

- 15.7 If Buyer awards the contract for the Work, such award will be to the responsible Bidder submitting the lowest responsive Bid.
- 15.8 If two or more Bidders quote identical amounts for the same Work, Buyer may award the contract by drawing lots between such Bidders or by such other means as it deems appropriate.
- 15.9 Buyer may return the Bids unopened, if only one Bid is received.
- 15.10 Evaluation of Bids
- In evaluating Bids, Buyer will consider whether the Bids comply with the prescribed requirements, and such other data as may be requested in the Bid Form or prior to the Notice of Intent to Award.
- 15.11 In evaluating whether a Bidder is responsible, Buyer will consider the qualifications of the Bidder as discussed in Paragraph 3.2.
- 15.12 Buyer may conduct such investigations as Buyer deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

PART 16 BONDS AND INSURANCE

- 16.1 Article 6 of the General and Supplementary Conditions, as may be modified by the Supplementary Conditions, sets forth Buyer's requirements as to performance and payment bonds, other required bonds (if any), and insurance. When the Successful Bidder delivers the executed Agreement to Buyer, it must be accompanied by required bonds and insurance documentation.
- 16.2 Part 8, Bid Security, of these Instructions, addresses the requirements for providing bid bonds as part of the bidding process.

PART 17 SIGNING OF AGREEMENT

- 17.1 When Buyer issues a Notice of Award to the Successful Bidder, it will be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 10 days thereafter, Successful Bidder must execute and deliver the required number of counterparts of the Agreement and any bonds and insurance documentation required to be delivered by the Contract Documents to Buyer. Within 10 days thereafter, Buyer will deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General and Supplementary Conditions.

PART 18 FUNDING

- 18.1 The work performed for this project is subject to the wage requirements of ORS 279C.800 and the Davis-Bacon Act. Work performed on the project will be subject to the higher of prevailing state or federal Davis-Bacon wage rates.
- 18.2 The goods and services provided for this project are being funded with monies made available by the Special Public Works Fund (SPWF) and the Water Infrastructure Finance and Innovation Act (WIFIA) which contains provisions commonly known as "American Iron and Steel;" that requires all of the

iron and steel products used in the project be produced in the United States (“American Iron and Steel Requirements”).

PART 19 PROTESTS

19.1 Solicitation Protest.

- A. Any Bidder may submit a protest of solicitation terms and conditions, in writing, in accordance with OAR 137-049-0260 to AJ Thorne at ajthorne@ci.sandy.or.us. To be considered, the protest must be received within 24 hours following the question deadline identified in the Invitation to Bid schedule. The protest shall include the legal and factual grounds for the protest, a description of the resulting prejudice to the Bidder if the protest is not granted, and a statement of the relief or changes proposed.
- B. The Buyer shall promptly respond to each properly-submitted written protest. Where appropriate, the Buyer will issue ITB revisions via email.
- C. Failure to protest solicitation terms and conditions, contract terms and conditions or specifications, as indicated in this section, precludes appeal or protest of a decision to award based upon such solicitation terms and conditions, contract terms and conditions, or specifications.

19.2 Addenda Protest. Requests for clarification, requests for change and protests of Addendum must be received by the time and date specified in the Addendum or they will not be considered.

19.3 Protest of Intent to Award.

- A. Adversely affected or aggrieved Bidders shall have seven (7) calendar days from the date of the Notice of Intent to Award within which to file a written protest of award. Protests received after that date will not be considered. Protests must specify the grounds upon which the protest is based. Protests must be emailed to AJ Thorne at ajthorne@ci.sandy.or.us.
- B. In order to be an adversely affected or aggrieved Bidder, the Bidder must claim to be eligible for award of the contract as the lowest responsible and responsive Bidder and that any and all lower Bids are ineligible to receive contract award. An actual Bidder who is adversely affected or aggrieved by the award of the contract to another Bidder may protest award, in writing, within the timeline established. The written protest shall state the grounds upon which the protest is based. No protest of award shall be considered after the deadline.
- C. Pursuant to OAR 137-049-0260, no protest against award shall be considered because of the content of Bid Specifications, Plans, or contract terms after the deadline established for submitting protests of Bid Specifications, Plans or contract terms.
- D. The Project Manager will respond in writing to intent-to-award protests submitted by adversely-affected or aggrieved Bidders. The Buyer may also respond to intent-to-award protests submitted by other Bidders for purposes of clarification. However, any response provided by the Buyer is not intended to, and shall not in and of itself constitute, confirmation that the Bidder is, in fact, adversely affected or aggrieved, and therefore entitled to protest an intent to award, or that the protest was timely filed.

PART 20 ATTACHMENTS

20.1 The attachments listed below and following "END OF SECTION" are part of this Instructions to Bidders:

- A. Certification of Employee Drug Testing Program – to be completed and submitted with Bid Proposal
- B. Confidentiality Statement

END OF SECTION

CERTIFICATION OF EMPLOYEE DRUG-TESTING PROGRAM

Bidder Company Name: _____

Address: _____

The following information and **signature** must be provided **by the company which provides employee drug-testing services** to the company submitting this bid proposal, **not** by the bidder.

I hereby attest that my company provides employee drug-testing services to the firm submitting this bid proposal, consistent with ORS 279C.505(2) and the applicable administrative rules.

Drug-Testing Company Name: _____

Address: _____

Drug-Testing Company Signature: _____

Printed Name: _____

Title: _____

Telephone: _____

CONFIDENTIALITY STATEMENT

The City of Sandy abides by the public records laws of the State of Oregon. As such, proposal documents are generally considered to be a matter of public record after the contract for work has been awarded. Information in a proposal may or may not be considered to be exempt from public disclosure based on the following:

- Trade secrets as identified in ORS 192.345(2);
- Information submitted in confidence as identified in ORS 192.355(2).

To the extent of the law, the City will endeavor to keep information confidential if the proposer marks the subject information as confidential. If a proposal contains any information that the Proposer believes is exempt from disclosure under the various grounds specified in the Oregon Public Records Law, the Proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the proposal, in whole, as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The City will make available to any person requesting information, through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so. City may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by the Proposer as exempt, the City will attempt to notify the impacted Proposer prior to any release of the material. Application of the Oregon Public Records Law by the City will determine whether any information is actually exempt from disclosure. The City accepts no liability for the release of any information submitted.

**SECTION 00 41 43.01 - BID PROPOSAL
FOR
BULL RUN SUPPLY PUMP STATION
PUMP AND PUMP CAN PROCUREMENT
FOR
CITY OF SANDY**

THIS BID IS SUBMITTED TO:

City of Sandy
39250 Pioneer Boulevard
Sandy, OR 97055

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the Buyer in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Advertisement, Invitation to Bid and Instructions to Bidders, including without limitations those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty (60) days after the day of Bid opening. Bidder will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within ten (10) days after the date of Buyer's Notice of Intent to Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
 - a. Bidder has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which is hereby acknowledged: (List Addenda by Addendum Number)

Addendum No. <_____> through Addendum No. <_____>.
 - b. Bidder is a resident Bidder in the State of Oregon as defined in ORS 279A.120.

(Check the Appropriate Box)

 YES

 NO
 - c. Bidder has become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
 - d. Bidder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
 - e. Bidder does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

- f. Bidder is aware of the general nature of Work to be performed by Buyer and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
 - g. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
 - h. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Bidder, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
 - i. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Buyer.
 - j. Bidder agrees to be bound by and will comply with and further agrees that the provisions required by ORS 279C.800 through 279C.870 and 40 U.S.C. 276(a) pertaining to prevailing wage rates, as applicable, shall be included in this contract.
 - k. Bidder agrees that if awarded the contract, Bidder will furnish to the Buyer, within ten (10) days after receiving from the Buyer Notice of Award, a signed Agreement, such Bonds, and certificates of insurance as are required by Buyer, and evidence of having obtained a \$30,000 public works bond with the Oregon Construction Contractors Board if the Project value exceeds \$100,000 and the Bidder is not exempted by the Board from the bond requirement.
 - l. Bidder agrees that if awarded the contract, the Bidder will commence the Work within ten (10) calendar days after the date of receipt of written Notice to Proceed, and that the Bidder will complete the Work within the time limits specified in the Agreement.
4. Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

**Schedule of Unit Price Work
For
BULL RUN SUPPLY PUMP STATION-PUMP AND PUMP CAN PROCUREMENT
For
CITY OF SANDY**

Item No.	Item	Quantity	Unit	Unit Costs	Total Cost
1	Furnish and deliver two vertical turbine pumps and motors	1	LS	\$	\$
2	Furnish and deliver four vertical turbine pump cans	1	LS	\$	\$
3	Provide pump startup services	1	LS	\$	\$

Total Bid: \$ _____
(Use words) (Use numbers)

***Abbreviations**

- | | |
|------------------|------------------|
| LS – Lump sum | LBS – Pounds |
| CY – Cubic yards | LF – Lineal feet |
| EA – Each | SY – Square yard |

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Unit Prices have been computed in accordance with paragraph 10.05 of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid Items will be based on actual quantities provided, determined as provided in the Contract Documents.

LUMP SUM BID PRICE (\$ _____)
(use words) (use figures)

5. Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with Paragraph 15.03 of the General Conditions of the Construction Contract on or before the dates or within the number of calendar days indicated in the Agreement. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.
6. The following documents are attached to and made a condition of this Bid:
 - a. Required Bid Security, in the form of < _____ > in the amount of \$< _____ > which is not more than ten percent (10%) of the total bid amount.

- b. Bid Package Pump and Pump Barrel (Can) Submittal as described in Section 43 21 27 Vertical Turbine Pumps, Can Type, Open Lineshaft.
7. Bidder certifies that Bidder will not discriminate against minority, women, or emerging small business enterprises in obtaining any subcontracts for this Work.
 8. The signor certifies that he or she has knowledge regarding Bidder's payment of taxes and by signing below certifies that, to the best of his or her knowledge, Bidder is not in violation of any tax laws of the state or a political subdivision of the state, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
 9. Bidder understands that any statement or representation it makes, in response to this Invitation to Bid, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, made under the contract being a "false claim" {ORS 180.750(2)} subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.
 10. Communications concerning this Bid shall be addressed to the address of Bidder indicated below.
 11. Terms used in this Bid which are defined in the General Conditions of the Construction Contract or Instructions to Bidders will have the meanings indicated in the General Conditions of the Construction Contract or Instructions to Bidders.

SUBMITTED on _____, 20____.

If Bidder is:

An Individual

By: _____ (SEAL)
(Signature)

(Print Individual's Name)

doing business as: _____

Business address: _____

Phone No.: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of General Partner)

(Print General Partner's Name)

Business address: _____

Phone No.: _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

By: _____ (SEAL)

(Signature of Person Authorized to Sign)

(Print Name of Person Authorized to Sign)

(Title)

(Corporate Seal)

Attest: _____

(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____

Date of Qualification to do business is: _____

A Joint Venture

Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of Joint Venture Partner)

(Print Name of Joint Venture Partner)

(Title)

Business Address: _____

Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of Joint Venture Partner)

(Print Name of Joint Venture Partner)

(Title)

Business Address: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

END OF SECTION

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SECTION 00 43 13 - BID BOND

Bidder		Surety	
Name:		Name:	
Address (<i>principal place of business</i>):		Address (<i>principal place of business</i>):	
Buyer		Bid	
Name: <p style="text-align: center;">CITY OF SANDY</p>		Project: Bull Run Supply Pump Station-Pump and Pump Can Procurement	
Address: 39250 Pioneer Boulevard Sandy, OR 97055			
		Bid Due Date: November 6, 2024	
Bond			
Penal Sum:			
Date of Bond:			
Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth in this Bid Bond, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.			
Bidder		Surety	
<i>(Full formal name of Bidder)</i>		<i>(Full formal name of Surety) (corporate seal)</i>	
By: _____	By: _____	<i>(Signature) (Attach Power of Attorney)</i>	
<i>(Signature)</i>		Name: _____	
Name: _____		<i>(Printed or typed)</i>	
<i>(Printed or typed)</i>		Title: _____	
Title: _____		Title: _____	
Attest: _____		Attest: _____	
<i>(Signature)</i>		<i>(Signature)</i>	
Name: _____		Name: _____	
<i>(Printed or typed)</i>		<i>(Printed or typed)</i>	
Title: _____		Title: _____	
Notes: (1) Note: Addresses are to be used for giving any required notice. (2) Provide execution by any additional parties, such as joint venturers, if necessary.			

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project, and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

END OF SECTION

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SECTION 00 52 43 – AGREEMENT BETWEEN BUYER AND SELLER
FOR
BULL RUN SUPPLY PUMP STATION
PUMP AND PUMP CAN PROCUREMENT
FOR
CITY OF SANDY

THIS AGREEMENT is dated as of the _____ day of _____ in the
year _____ by and between City of Sandy, OR (hereinafter called Buyer) and
_____ (hereinafter called Seller).

Buyer and Seller, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1—GOODS AND SPECIAL SERVICES

- 1.1 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2—WORK

- 2.1 The Work contemplated consists of furnishing, delivering, and providing start-up services for two (2) vertical turbine pumps and four (4) vertical turbine pump cans that will be incorporated into their planned Bull Run Supply Pump Station. The four pump cans will be installed by the Portland Water Bureau's (PWB) construction contractor that is currently constructing the Water Bureau's new water filtration plant facility located along Carpenter Lane in Multnomah County. The City and the PWB have an Inter-Governmental Agreement in place for the PWB's contractor to complete the installation of the four pump cans, along with some other miscellaneous suction piping, for the City at their proposed Bull Run Supply Pump Station located just north of the PWB Water Bureau's site. The two vertical turbine pumps will be installed by the City's construction contractor during the full construction of the pump station project that is anticipated to go out for public bids in spring of 2025.

ARTICLE 3—ENGINEER

- 3.1 The Contract Documents for the Goods and Special Services have been prepared by Consor North America, Inc ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

ARTICLE 4—POINT OF DESTINATION

- 4.1 The Point of Destination is designated as: *City of Sandy Bull Run Pump Station Site, located on the north side of the PWB Bull Run Filtration Facility site, across from 35319 SE Carpenter Lane, Gresham, OR 97080.*

ARTICLE 5—CONTRACT TIMES

- 5.1 Time is of the Essence: All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 5.2 Work shall be substantially completed by the following milestones for work elements:
- A. Substantial Completion #1: Delivery of four vertical turbine pump cans: **March 1, 2025**
 - B. Substantial Completion #2: Delivery of two vertical turbine pumps and motors: **December 1, 2025**
 - C. Substantial Completion #3: Provide startup related services: **July 1, 2026**
- 5.3 The Work shall be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **July 1, 2026**. As further identified in the General Conditions, the number of days or the dates by which Seller shall (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work shall be referred to as the "Contract Times."

The above completion dates are based on the following:

- Notice of Award no more than 45 days after Bid Opening Date
- Buyer Signing of Agreement and Issuance of Notice to Proceed within 30 days after Notice of Award.

Where the Buyer is prevented from signing of Agreement and issuing Notice to Proceed due to a delay in receiving signed agreements, bonds, and insurance certificates from Seller in the form required by the Contract Documents, the Contract Times will not be extended.

Where the Seller is prevented from starting to perform the Work due to reasonable and documented delay in issuance of Notice to Proceed beyond the control of the Seller, the Contract Times will be extended in an amount equal to the time lost due to such delay, and such extension of the Contract Times shall be Seller's sole and exclusive remedy for such delay.

- 5.4 *Liquidated Damages.* Buyer and Seller recognize that time is of the essence of this Agreement and that Buyer will suffer financial loss if the Work is not completed within the times specified in Paragraph 2.2 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. Buyer and Seller also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Buyer if the Work is not completed on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Seller shall pay Buyer

Eight Hundred dollars (\$ 800)

for each day that expires after the time specified in Paragraph 5.2 for Substantial Completion until the Work is substantially complete.

2. *Completion of Remaining Work:* After Substantial Completion, if Seller shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 5.2 for completion and readiness for final payment or any proper extension thereof granted by Buyer, Seller shall pay Buyer

Five Hundred _____ dollars (\$ 500 _____)

for each day that expires after the time specified in Paragraph 5.2 for completion and readiness for final payment.

ARTICLE 6—CONTRACT PRICE.

Buyer shall pay Seller for completion of the Work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in the attached Bid Proposal, said sum being

(_____)(the "Contract Price").
(use words) (use figures)

ARTICLE 7—PAYMENT PROCEDURES.

SELLER shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

7.1 Seller shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

7.2 *Progress Payments; Retainage.*

A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:

1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to 15 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
2. Upon receipt of the second such Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to 90 percent of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

7.3 *Final Payment.*

A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Buyer shall pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

ARTICLE 8—INTEREST

8.1 Interest: All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest from the date payment is due at the rate set forth in ORS 279C.570.

ARTICLE 9—SELLER'S REPRESENTATIONS

9.1 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:

- A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
- B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
- C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10—CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between Buyer and Seller concerning the Work consist of the following:

- 10.1 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to Article 3.04 of the General Conditions
- 10.2 This Agreement (pages 1 to ____, inclusive)
- 10.3 Performance Bond (pages 1 to ____, inclusive)

- 10.4 Payment Bond (pages 1 to ____, inclusive)
- 10.5 Other Bonds (pages 1 to ____, inclusive)
- 10.6 General Conditions (pages 1 to ____, inclusive)
- 10.7 Supplementary Conditions (pages 1 to ____, inclusive)
- 10.8 Specifications bearing the title Technical Specifications, as listed in table of contents thereof
- 10.9 Addenda numbers ____ to ____, inclusive.
- 10.10 Seller's Bid Proposal (pages 1 to ____, inclusive).
- 10.11 Exhibits to this Agreement (enumerated as follows):
 - A. Exhibit A-1 to Agreement between Buyer and Seller dated _____, Assignment of Contract; Consent to Assignment; and Acceptance of Assignment.
 - B. Exhibit A-2 to Agreement between Buyer and Seller dated _____, Agreement to Assignment by Seller's Surety.
 - C. Seller's Bid, solely as to the prices set forth therein (pages ____ to ____, inclusive);
 - D. Documentation submitted by Seller prior to Notice of Award (pages ____ to ____ inclusive).

The documents listed in Article 10 are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 10.

The Contract Documents may only be amended or supplemented as provided in Paragraph 3.04 of the General Conditions.

In the event of a conflict between the Contract Documents, the Contract Documents shall be given precedence in the order listed above.

ARTICLE 11—MISCELLANEOUS.

- 11.1 Terms used in this Agreement which are defined in Article I of the General Conditions will have the meanings indicated in the General Conditions and Supplementary General Conditions.
- 11.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 11.3 Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

- 11.4 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 11.5 By its signature on this Agreement, Seller certifies that the service or services to be performed under the Contract Documents are those of an independent Seller as defined in ORS 670.600, and that Seller is solely responsible for the work performed under the Contract Documents. Seller represents and warrants that Seller, its subSellers, employees, and agents are not "officers, agents, or employees" of the City within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Seller shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.
- 11.6 Nothing contained in these Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against City or Seller. Seller's Work under these Contract Documents shall be performed solely for City's benefit, and no other entity or person shall have any claim against Seller because of the Contract Documents for the performance or nonperformance of Work hereunder.
- 11.7 Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.7:
- A. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - B. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 - C. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - D. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- 11.8 Entire Agreement. The Contract Documents represent the entire agreement of the parties with respect to the subject matter hereof, and supersede and replaces all prior and contemporaneous oral and written agreements with respect to such subject matter. No amendment, modification or variation of the terms and conditions of the Contract Documents shall be valid unless it is in writing and signed by all parties hereto.
- 11.9 Governing Law, Jurisdiction and Venue; Waiver of Jury Trial. The parties acknowledge that the Contract Documents have been negotiated and entered into in the State of Oregon. The parties expressly agree that the Contract Documents shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the Oregon. Venue and jurisdiction for any action at law or in equity relating to this Agreement shall lie exclusively in the Circuit Court of the State of Oregon for Multnomah County, and not in any other state or federal court that may have concurrent

jurisdiction. Should any action or proceeding arising under or as a result of this Agreement proceed to court, it shall be tried without a jury.

11.10 Attorney Fees. In the event action is instituted to enforce any term of the Contract Documents, the prevailing party shall recover from the losing party reasonable attorney's fees incurred in such action as set by the Trial Court and, in the event of an appeal, as set by the Appellate Court.

11.11 Limitations

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Contract. Upon assignment the terms of this Paragraph 11.11.A shall be binding upon the assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.
- B. Upon assignment the terms of this Paragraph 11.11.B shall be binding upon both the assignor and assignee with respect to Seller's liability, and upon Seller with respect to both assignor's and assignee's liabilities. The terms of this mutual limitation do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification with respect to third-party claims, losses, and damages; (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

IN WITNESS WHEREOF, BUYER and SELLER have signed this Agreement in triplicate. One counterpart each has been delivered to BUYER, SELLER and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by BUYER and SELLER or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 2024 (which is the Effective Date of the Agreement).

BUYER:

SELLER:

By:

By:

Attest:

Attest:

Address for giving notices:

Address for giving notices:

(If BUYER is a public body,

attach evidence of authority
to sign and resolution or other

documents authorizing

execution of Agreement?.

Seller License No.: _____

Agent for service of process:

(If SELLER is a corporation, attach evidence of authority to sign).

SECTION 00 61 13.13 - PERFORMANCE BOND

Seller Name: Address (<i>principal place of business</i>):	Surety Name: Address (<i>principal place of business</i>):
Buyer Name: CITY OF SANDY Mailing address (<i>principal place of business</i>): 39250 Pioneer Boulevard Sandy, OR 97055	Contract Bull Run Supply Pump Station-Pump and Pump Can Procurement Contract Price: Effective Date of Contract:
Bond Bond Amount: Date of Bond: (<i>Date of Bond cannot be earlier than Effective Date of Contract</i>) Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Seller as Principal	Surety
By: _____ (<i>Full formal name of Seller</i>) _____ (<i>Signature</i>)	By: _____ (<i>Full formal name of Surety</i>) (<i>corporate seal</i>) _____ (<i>Signature</i>)(<i>Attach Power of Attorney</i>)
Name: _____ (<i>Printed or typed</i>)	Name: _____ (<i>Printed or typed</i>)
Title: _____	Title: _____
Attest: _____ (<i>Signature</i>)	Attest: _____ (<i>Signature</i>)
Name: _____ (<i>Printed or typed</i>)	Name: _____ (<i>Printed or typed</i>)
Title: _____	Title: _____
Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Seller performs the Construction Contract, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
 - 3.2. The Buyer declares a Seller Default, terminates the Construction Contract, and notifies the Surety; and
 - 3.3. The Buyer has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a Seller selected to perform the Construction Contract.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent Sellers;
 - 5.3. Obtain bids or negotiated proposals from qualified Sellers acceptable to the Buyer for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Buyer and a Seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Buyer the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Buyer as a result of the Seller Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new Seller, and with reasonable promptness under the circumstances:
 - 5.4.1 After investigation, determine the amount for which it may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or

- 5.4.2 Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Construction Contract, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Construction Contract. Subject to the commitment by the Buyer to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Seller for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Seller.
 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
 9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Seller Default or within two years after the Seller ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
 12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Buyer to the Seller under the Construction Contract after all proper adjustments have been made including allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Construction Contract.
- 14.2. *Construction Contract*—The agreement between the Buyer and Seller identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 14.3. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
- 14.4. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 14.5. *Contract Documents*—All the documents that comprise the agreement between the Buyer and Seller.
15. If this Bond is issued for an agreement between a Seller and subcontractor, the term Seller in this Bond will be deemed to be Subcontractor and the term Buyer will be deemed to be Seller.
16. Modifications to this Bond are as follows: None

**SECTION 00 70 00
STANDARD GENERAL CONDITIONS
FOR PROCUREMENT CONTRACTS**

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STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.
 3. *Application for Payment*—The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*— The offer or proposal of a Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
 5. *Bidder*—The individual or entity that submits a Bid directly to Buyer.
 6. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
 8. *Buyer*—The individual or entity purchasing the Goods and Special Services.
 9. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.

10. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*—Those items so designated in the Agreement. Shop Drawings and other Seller submittals are not Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
13. *Contract Price*—The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.
14. *Contract Times*—The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.
15. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Drawings as so defined.
16. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
17. *Engineer*—The individual or entity designated as such in the Agreement.
18. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.
19. *General Requirements*—Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
20. *Goods*—The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.
21. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.
24. *Notice of Award*—The written notice by Buyer to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.
25. *Notice to Proceed*—A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.
26. *Point of Destination*—The specific address of the location where delivery of the Goods shall be made, as stated in the Agreement.
27. *Project*—The total undertaking of which the Goods and Special Services may be the whole, or only a part.
28. *Project Manual*—The documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual is contained in its table of contents.
29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
30. *Seller*—The individual or entity furnishing the Goods and Special Services.
31. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods and Special Services.
32. *Special Services*—Services associated with the Goods to be furnished by Seller as required by the Contract Documents.
33. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.

34. *Successful Bidder*—The Bidder submitting a responsive Bid, to whom Buyer makes an award.
35. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
36. *Work Change Directive*—A written statement to Seller issued on or after the Effective Date of the Agreement and signed by Buyer ordering an addition, deletion, or other revision in the Contract Documents with respect to the Goods and Special Services. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Contract Documents.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that fail to conform to the Contract Documents.
 3. The word “receipt” when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.

4. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
 5. The word "furnish," when used in connection with the Goods and Special Services shall mean to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Contract Documents.
- C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish.

2.02 *Evidence of Insurance*

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller shall deliver to Buyer, with copies to each additional insured identified by name in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Seller is required to purchase and maintain in accordance with Article 4.

2.03 *Copies of Documents*

- A. Buyer shall furnish Seller up to five printed or hard copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.04 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.05 *Designated Representatives*

- A. Buyer and Seller shall each designate its representative at the time the Agreement is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

2.06 *Progress Schedule*

- A. Within 15 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Contract Documents. No progress payment will be made to Seller until an acceptable schedule is submitted to Buyer and Engineer.
- B. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

2.07 *Preliminary Conference*

- A. Within 20 days after the Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.08 *Safety*

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND AMENDING

3.01 *Intent*

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.

- C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

3.02 *Standards, Specifications, Codes, Laws and Regulations*

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Buyer or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Buyer or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Seller's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Seller's Review of Contract Documents Before the Performance of the Contract:* Before performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Seller shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Seller discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with the furnishing of any Goods and Special Services affected thereby.
2. *Seller's Review of Contract Documents During the Performance of the Contract:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract, any standard, specification, manual or code, or of any instruction of any Supplier, Seller shall promptly report it to Engineer in writing. Seller shall not proceed with the furnishing of the Goods and Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued.
3. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Seller had actual knowledge thereof.

- B. *Resolving Discrepancies*: Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Clarifying Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods and Special Services or to modify contractual terms and conditions by a Change Order.
- B. Buyer may issue a Work Change Directive providing for additions, deletions, or revisions to the Goods and Special Services, in which case (1) the Contract Price shall be equitably adjusted to account for any reasonable and necessary credits to Buyer for any such deletion, or for costs (including reasonable overhead and profit) incurred by Seller to accommodate such an addition or revision and (2) the Contract Times shall be equitably adjusted to account for any impact on progress and completion of performance. Such adjustments subsequently shall be duly set forth in a Change Order.
- C. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods and Special Services may be authorized, by one or more of the following ways:
1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 5.06.D.3); or
 3. Engineer's written interpretation or clarification.

ARTICLE 4 - BONDS AND INSURANCE

4.01 *Bonds*

- A. Seller shall furnish to Buyer performance and payment bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Seller's obligations under the Contract Documents. These bonds shall remain in effect until 1) one year after the date when final payment becomes due or 2) completion of the correction period specified in Paragraph 8.03, whichever is later, except as provided otherwise by Laws or

Regulations or by the Contract Documents. Seller shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Seller is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 4.01.B and 4.02.

4.02 *Insurance*

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.
- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Contract, Seller shall comply with the written request of assignee to provide certificates of insurance to assignee.
- D. Buyer does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Seller's liability under the indemnities granted to Buyer in the Contract Documents.

4.03 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Buyer or Seller shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 5 - SELLER'S RESPONSIBILITIES

5.01 *Supervision and Superintendence*

- A. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Contract Documents. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Contract Documents. Seller shall not be responsible for the negligence of Buyer or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure that is shown or indicated in and expressly required by the Contract Documents.

5.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, shall be as specified, and unless specified otherwise in the Contract Documents, shall be:
 1. new, and of good quality;
 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
 3. shop assembled to the greatest extent practicable.

5.03 *Laws and Regulations*

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such performance. It shall not be Seller's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this provision shall not relieve Seller of Seller's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of

performance shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.

5.04 *Or Equals*

- A. Whenever the Goods, or an item of material or equipment to be incorporated into the Goods, are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer’s review.
1. If in Engineer’s sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an “or-equal” item.
 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if:
 - a. in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and
 - b. Seller certifies that if approved: 1) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and 2) the proposed item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Engineer’s Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraph 5.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or submittal. No “or-equal” will be ordered, manufactured or utilized until Engineer’s review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer’s approval of an “or-equal” item, Seller shall remain obligated to comply with the requirements of the Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller’s expense a special performance guarantee or other surety with respect to any such proposed “or-equal.”
- D. *Data:* Seller shall provide all data in support of any such proposed “or-equal” at Seller’s expense.

5.05 Taxes

- A. Seller shall be responsible for all taxes and duties arising out of the sale of the Goods and the furnishing of Special Services. All taxes are included in the Contract Price, except as noted in the Supplementary Conditions.

5.06 Shop Drawings and Samples

- A. Seller shall submit Shop Drawings and Samples to Buyer for Engineer's review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide.
- B. Where a Shop Drawing or Sample is required by the Contract Documents, any related work performed prior to Engineer's approval of the pertinent submittal will be at the sole expense and responsibility of Seller.
- C. *Submittal Procedures:*
 - 1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:
 - a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and
 - b. that all materials are suitable with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.
 - 2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.
 - 3. Each submittal shall bear a stamp or include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.
 - 4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples.
2. Engineer's review and approval will be only to determine if the Goods and Special Services covered by the submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole.
3. Engineer's review and approval shall not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has complied with the requirements of Paragraph 5.06.C.4 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Seller from responsibility for complying with the requirements of Paragraph 5.06.C.1.

E. *Resubmittal Procedures:*

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.

5.07 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement.
- B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraphs 11.03 or 11.04, or as Buyer and Seller may otherwise agree in writing.

5.08 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods shall comply with the requirements of Paragraph 5.02.B.

- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller; or
 2. corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Contract Documents and the Contract Documents required the Goods to withstand such conditions;
 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:
1. observations by Buyer or Engineer;
 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 3. use of the Goods by Buyer;
 4. any acceptance by Buyer (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
 5. the issuance of a notice of acceptance by Buyer pursuant to the provisions of Article 8;
 6. any inspection, test or approval by others; or
 7. any correction of non-conforming Goods and Special Services by Buyer.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.
- F. Seller makes no implied warranties under this Contract.

5.09 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer and Engineer, and the officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the

Contract Documents, provided that any such claim, cost, loss, or damages attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

- B. In any and all claims against Buyer or Engineer or any of their respective assignees, consultants, agents, officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.09.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Seller under Paragraph 5.09.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

5.10 *Delegation of Professional Design Services*

- A. Seller will not be required to provide professional design services unless such services are specifically required by the Contract Documents or unless such services are required to carry out Seller's responsibilities for furnishing the Goods and Special Services. Seller shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to the Goods and Special Services are specifically required of Seller by the Contract Documents, Buyer and Engineer will specify all performance and design criteria that such services must satisfy. Seller shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Goods and Special Services designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Buyer and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Buyer

and Engineer have specified to Seller all performance and design criteria that such services must satisfy.

- D. Pursuant to this Paragraph 5.10, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 5.06.D.2.
- E. Seller shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 6 - SHIPPING AND DELIVERY

6.01 *Shipping*

- A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling and any other costs associated with shipment and delivery.

6.02 *Delivery*

- A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.
- B. Seller shall provide written notice to Buyer at least 10 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times for delivery set forth in the Agreement, or another date agreed by Buyer and Seller.
- E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

6.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-

conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

6.04 *Progress Schedule*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06 as it may be adjusted from time to time as provided below.
 - 1. Seller shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.06) proposed adjustments in the progress schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 7. Adjustments in Contract Times may only be made by a Change Order.

ARTICLE 7 - CHANGES: SCHEDULE AND DELAY

7.01 *Changes in the Goods and Special Services*

- A. Buyer may at any time, without notice to any surety, make an addition, deletion, or other revision to the Contract Documents with respect to the Goods and Services, within the general scope of the Contract, by a Change Order or Work Change Directive. Upon receipt of any such document, Seller shall promptly proceed with performance pursuant to the revised Contract Documents (except as otherwise specifically provided).
- B. If Seller concludes that a Work Change Directive issued by Buyer affects the Contract Price or Contract Times, then Seller shall notify Buyer within 15 days after Seller has received the Work Change Directive, and submit written supporting data to Buyer within 45 days after such receipt. If Seller fails to notify Buyer within 15 days, Seller waives any Claim for such adjustment. If Buyer and Seller are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 9.06.
- C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments to Contract Price or Contract Times.

7.02 *Changing Contract Price or Contract Times*

- A. The Contract Price or Contract Times may only be changed by a Change Order.
- B. Any Claim for an adjustment in the Contract Price or Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 9.06.

- C. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include but are not limited to acts or neglect by Buyer, inspection delays, fires, floods, epidemics, abnormal weather conditions, acts of God, and other like matters. If such an event occurs and delays Seller's performance, Seller shall notify Buyer in writing within 15 days of knowing or having reason to know of the beginning of the event causing the delay, stating the reason therefor.
- D. Seller shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Seller. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.
- E. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.
- F. Neither Buyer nor Seller shall be entitled to any damages arising from delays which are beyond the control of both Buyer and Seller, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, and other like matters.

ARTICLE 8 - BUYER'S RIGHTS

8.01 *Inspections and Testing*

A. *General:*

1. The Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 8.01.A.2 immediately above); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.

4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination.
6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Contract.

B. Inspection on Delivery:

1. Buyer or Engineer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. Within ten days of such visual inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming and that Buyer has acknowledged their receipt upon delivery.
3. If, on the basis of the visual inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.

C. Final Inspection:

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as indicated, Buyer or Engineer will make a final inspection.
2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.
3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

8.02 *Non-Conforming Goods and Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.
- B. Buyer's Rejection of Non-Conforming Goods:
1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.
 2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.
 3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- C. Remedying Non-Conforming Goods and Special Services:
1. If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
 2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.
- D. Buyer's Acceptance of Non-Conforming Goods:
- Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.
- E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations shall include the

costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.

F. *Buyer's Rejection of Conforming Goods:*

If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

8.03 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the earlier of the date on which Buyer has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

ARTICLE 9 - ROLE OF ENGINEER

9.01 *Duties and Responsibilities*

- A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Contract Documents.

9.02 *Clarifications and Interpretations*

- A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be binding on Buyer and Seller. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

9.03 *Authorized Variations*

- A. Engineer may authorize minor deviations or variations in the Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 5.06.C.4, or 2) a Field Order.

9.04 *Rejecting Non-Conforming Goods and Special Services*

- A. Engineer will have the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer will also have authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 8.01 whether or not the Goods are fabricated or installed, or the Special Services are completed.

9.05 *Decisions on Requirements of Contract Documents*

- A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.
- B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Buyer or Seller and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.06 *Claims and Disputes*

- A. *Notice:* Written notice of each Claim relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to either party's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data shall be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.
- B. *Engineer's Decision:* Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- C. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 9.06.B., Engineer shall be deemed to have issued a decision denying the Claim in its

entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

- D. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 9.06.C, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Article 13.
- E. If Article 13 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 13, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 9.06.
- G. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the time periods established in this Paragraph 9.06; if so, a written record of such mutual agreement should be made and jointly executed.

ARTICLE 10 - PAYMENT

10.01 *Applications for Progress Payments*

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.
 1. The first application for Payment will be submitted after review and approval by Engineer of all Shop Drawings and of all Samples required by the Contract Documents.
 2. The second Application for Payment will be submitted after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights. In the case of multiple deliveries of Goods, additional Applications for Payment accompanied by the required

documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.

10.02 *Review of Applications for Progress Payments*

- A. Engineer will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Seller may make the necessary corrections and resubmit the Application.
1. Engineer's recommendation of payment requested in the first Application for Payment will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data, that the Shop Drawings and Samples have been reviewed and approved as required by the Contract Documents and Seller is entitled to payment of the amount recommended.
 2. Engineer's recommendation of payment requested in the Application for Payment submitted upon Buyer's acknowledgment of receipt of the Goods will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data Seller is entitled to payment of the amount recommended. Such recommendation will not constitute a representation that Engineer has made a final inspection of the Goods, that the Goods are free from non-conformities, acceptable or in conformance with the Contract Documents, that Engineer has made any investigation as to Buyer's title to the Goods, that exhaustive or continuous inspections have been made to check the quality or the quantity of the Goods beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle Seller to additional payments by Buyer or Buyer to withhold payment to Seller.
 3. Engineer may refuse to recommend that all or any part of a progress payment be made, or Engineer may nullify all or any part of any payment previously recommended if, in Engineer's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests Engineer considers such refusal or nullification necessary to protect Buyer from loss because the Contract Price has been reduced, Goods are found to be non-conforming, or Seller has failed to furnish acceptable Special Services.

10.03 *Amount and Timing of Progress Payments*

- A. Subject to Paragraph 10.02.A., the amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment with Engineer's recommendation pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30-day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer

to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

10.04 *Suspension of or Reduction in Payment*

- A. Buyer may suspend or reduce the amount of progress payments, even though recommended for payment by Engineer, under the following circumstances:
 - 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents, and
 - 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

10.05 *Final Application for Payment*

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer, furnished all Special Services, and delivered all documents required by the Contract Documents, Engineer will issue to Buyer and Seller a notice of acceptance. Seller may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Contract Documents, a list of all unsettled Claims, and such other data and information as Buyer or Engineer may reasonably require.

10.06 *Final Payment*

- A. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Contract Documents, and that Seller's has fulfilled all other obligations under the Contract Documents, then Engineer will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of Paragraph 10.07 and present the Application to Buyer. Otherwise, Engineer will return the Application to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the Application for payment. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount

recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages to which Buyer is entitled.

10.07 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens from non-conformities in the Goods or Special Services appearing after final payment, from Seller's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Seller against Buyer (other than those previously made in accordance with the requirements herein and listed by Seller as unsettled as required in Paragraph 10.05.A, and not resolved in writing).

ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION

11.01 *Cancellation*

- A. Buyer has the right to cancel the Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Buyer. Upon cancellation:
1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

11.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Contract for up to a maximum of ninety days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Contract Times and Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

11.03 *Suspension of Performance by Seller*

- A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract; and,

2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

11.04 Breach and Termination

A. Buyer's Breach:

1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:
 - a. wrongful rejection or revocation of Buyer's acceptance of the Goods,
 - b. failure to make payments in accordance with the Contract Documents, or
 - c. wrongful repudiation of the Contract.
2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
 - a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. Seller's Breach:

1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:
 - a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
 - b. wrongful repudiation of the Contract, or
 - c. delivery or furnishing of non-conforming Goods and Special Services.
2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

- a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
- b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

ARTICLE 12 - LICENSES AND FEES

12.01 *Intellectual Property and License Fees*

- A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.
- B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

12.02 *Seller's Infringement*

- A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, Engineer and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Goods as delivered hereunder.
- B. In the event of suit or threat of suit for intellectual property infringement, Buyer will promptly notify Seller of receiving notice thereof.
- C. Seller shall promptly defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.
 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.

2. If Buyer fails to provide Seller the opportunity to defend such suit or claim after written notice by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon intellectual property rights of another, Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's own expense.

12.03 *Buyer's Infringement*

- A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).
- B. In the event of suit or threat of suit for intellectual property infringement, Seller must after receiving notice thereof promptly notify Buyer.
- C. Upon written notice from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.
1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.
 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim after written notice by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.

12.04 *Reuse of Documents*

- A. Neither Seller nor any other person furnishing any of the Goods and Special Services under a direct or indirect contract with Seller shall: (1) acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions; or (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Seller from retaining copies of the Contract Documents for record purposes.

12.05 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, copies of data furnished by Buyer or Engineer to Seller, or by Seller to Buyer or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 13 - DISPUTE RESOLUTION

13.01 *Dispute Resolution Method*

- A. Either Buyer or Seller may initiate the mediation of any Claim decided in writing by Engineer under Paragraph 9.06.B or 9.06.C before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the Engineer's decision from becoming final and binding.
- B. Buyer and Seller shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the Claim, then Engineer's written decision under Paragraph 9.06.B or a denial pursuant to Paragraph 9.06.C shall become final and binding 30 days after termination of the mediation unless, within that time period, Buyer or Seller:
 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
 2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. if no dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

ARTICLE 14 - MISCELLANEOUS

14.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if: 1) delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or 2) if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

14.02 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Point of Destination is located.
- B. In the case of any conflict between the express terms of this Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Contract shall apply.

14.03 *Computation of Time*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

14.04 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

14.05 *Survival of Obligations*

- A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the

Contract Documents, will survive final payment, completion, and acceptance of the Goods and Special Services and termination or completion of the Agreement.

14.06 *Entire Agreement*

- A. Buyer and Seller agree that this Agreement is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

SECTION 00 73 45 - WIFIA REQUIREMENTS

This project is partially funded through federal funds under the Water Infrastructure Finance and Innovation Act (WIFIA). As such, attention is drawn to the following federal laws which will apply to this contract. All references to the Buyer shall be synonymous with City of Sandy, OR (City), or any of its delegates. All references to Contractor shall be synonymous with Buyer.

Item 1: Economic and Miscellaneous Authorities

1.1 Debarment and Suspension, Executive Order 12549, 51 FR 6370, February 21, 1986

Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Suspension and debarment information can be accessed at <http://www.sam.gov>. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

1.2 New Restrictions on Lobbying, 31 USC 1352

Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for USEPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, Contractor shall complete and submit the certification and disclosure forms pursuant to 40 CFR Part 34. Contractor shall also require all subcontractors and suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Item 2: Civil Rights, Nondiscrimination, EEO Authorities

2.1 Civil Rights Obligations

Contractor shall comply with the following federal non-discrimination requirements:

- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- c. The Age Discrimination Act of 1975, which prohibits age discrimination.
- d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
- e. 40 CFR Part 7, as it relates to the foregoing.
- f. Executive Order No. 11246

2.2 Equal Employment Opportunity (EEO) Obligations Under EO 11246:

The Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). Contractor's compliance with Executive order 11246 shall be based on implementation of the Equal

Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect

to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

2.3 Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) located at 41 CFR 60-4.3:

- 1) As used in these specifications:
 - a) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - b) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d) “Minority” includes:
 - i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- 3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being

performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- 5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- 7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by

- posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions

taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- 9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- 15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

2.4 Segregated Facilities, 41 CRF 60-1.8

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms,

work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

2.5 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) located at 41 CFR § 60-4.2:

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time- tables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year ¹	6.9% ²

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

¹ Goals can be found at: https://www.dol.gov/ofccp/TAGuides/TAC_FedContractors_JRF_QA_508c.pdf

² Nationwide goal for all covered areas

2.6 Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements

**Note: Minimal requirement of the WIFIA program is to incorporate six good faith efforts during contract and subcontract procurement and maintain documentation of efforts. State may require additional DBE reporting.*

Disadvantaged Business Enterprises (DBE). The contractor must ensure that the DBE's six good faith efforts are used during the procurement of subcontractors for the [Project]. The six good faith efforts are found at:

<https://www.epa.gov/grants/disadvantaged-business-enterprise-program-requirements#sixgoodfaithefforts>.

Contractor agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. Contractor shall comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

2.7 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Effective August 13, 2020). The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), at Section 889, prohibits EPA financial assistance recipients, including WIFIA borrowers, from expending loan funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in the Act, "covered telecommunications equipment or services" means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

The Act does not prohibit:

- a) Procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.
- b) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

Item 3: American Iron and Steel and Federal Labor Standards

3.1 American Iron and Steel Requirement

The Contractor acknowledges to and for the benefit of the City of Sandy (“Purchaser”) and the United States Environmental Protection Agency (“EPA”) that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as “American Iron and Steel” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Purchaser and the EPA that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the EPA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While the Contractor has no direct contractual privity with the EPA, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

3.2 Compliance with Davis Bacon and related acts

- (a) In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):
 - (1) Minimum wages.
 - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29

CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

- (A) The WIFIA assistance recipient, the City of Sandy, on behalf of the U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the WIFIA assistance recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA

assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (2) Withholding. the City of Sandy, shall upon written request of the WIFIA Director or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
- (3) Payrolls and basic records.
- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) {no text here}
- (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City of Sandy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City of Sandy, for transmission to the EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the City of Sandy.
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of [name of the borrower, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the EPA may, after written notice to the City of Sandy, take such action as may be necessary to cause the suspension of

any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the WHD Administrator determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the City of Sandy, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (b) Contract Work Hours and Safety Standards Act.** The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or

permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The City of Sandy shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
 - (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- (c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the City of Sandy to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the City of Sandy, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Item 4: Contract Clauses for Contracts Involving Federal Funds

1. **General.** Contractor agrees to comply with all applicable requirements set forth in 2 CFR Part 200. To the extent there is inconsistency with WIFIA requirements, the WIFIA clauses control.
2. **DUNS Number and SAM Registration.** Contractor must have both a DUNS number and have a SAM registration. The links below can help contractors if they have not already addressed this requirement.

<p>SAM http://www.sam.gov/portal/public/SAM/</p> <p>NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed</p>	<p>Registration:</p> <p>DUNS Number http://www.dnb.com/get-a-duns-number.html</p>
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3. **Inspections; Information.** Contractor shall permit, and cause its subcontractors to allow, the The City of Sandy, the federal government and any party designated by them to:
 - a. Examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project.
 - b. Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
 - c. Interview any officer or employee of Contractor, or its subcontractors, regarding the Project.
 - d. Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed.
4. **Whistleblower** (language to be included in all construction contracts and subcontracts)
“Contractor receiving SDWRLF funds shall under or through this contract to, post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).”
5. **Suspension and Debarment.** Contractor certifies that it is not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension,” and shall not contract or permit any subcontract at any level with any party similarly excluded or ineligible. A list of excluded parties is available in the System for Award Management (SAM) at www.sam.gov, under “search records.”
6. **Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
7. **Energy Efficiency.** Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
8. **Rights to Inventions Made Under the Contract.** If the Contract meets the definition of “funding agreement” under 37 CFR § 401.2((a) and there is an assignment or performance of experimental, developmental, or research work under that “funding agreement,” then Contractor shall comply with the requirements of 37 CFR Part 301 and any implementing regulations.
9. **Federal Labor Standards (“Davis-Bacon Act” Requirements).**
 - a. **Prevailing Wage Requirements.** The work to be completed under the contract must be carried out in compliance with federal Davis Bacon and related Acts and the Oregon Bureau of Labor and Industries (BOLI) requirements. Contractor shall pay each worker employed in the performance of this Contract not less than the higher of the wage rate for the type of work being performed as set forth in either the Oregon Prevailing Wage “Prevailing Wage for Public Works Contracts in Oregon” or the applicable federal Davis-Bacon Wage Decision. Contractor

shall download a US Department of Labor Employee Fair Compensation Notice and post it at the work site along with a list of locally prevailing wage rates. Contractor shall prepare and submit weekly Certified Payroll Reports. Contractor shall permit access to construction site in order to conduct on-site interviews with workers during working hours.

b. Minimum wages.

- i. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Contractor may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

- ii. Contractor shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.
- iii. If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- c. **Withholding.** Owner shall withhold or cause to be withheld from Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-

assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, Owner may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

d. Payroll and basic records.

- i. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- ii. Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Owner. Such documentation shall be available on request. As to each payroll copy received, Contractor shall provide written confirmation in a form satisfactory to the Owner indicating whether or not the project is in compliance with the requirements.
- iii. Contractor or subcontractor shall make the records required under this section available for inspection, copying, or transcription by authorized representatives of the federal government that was the source of the federal funds, and shall permit such representatives to interview employees during working hours on the job. If Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- e. **Compliance with Related Requirements of Davis-Bacon Act.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- i. Disputes concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors), the federal government, or the employees or their representatives.
 - ii. Certification of Eligibility. By entering into this contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - iv. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
10. **Termination for Cause and Convenience for Contract.** Contractor is directed to the Contract for provisions on termination for cause and for convenience.
11. **Copeland "Anti-Kickback" Act.** Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 847) as supplemented in Department of Labor regulations (29 CFR part 3).
12. **Byrd Anti-Lobbying Amendment.** Contractor shall sign a certification regarding lobbying through a form attached to the Contract.
13. **Procurement of Recovered Materials.** Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including procuring recovered materials in a manner designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
14. **Compliance with Copeland Act requirements.** Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
15. **Contract Work Hours and Safety Standards Act.**
- a. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor

responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

- c. **Withholding for unpaid wages and liquidated damages.** The Owner, upon written request of an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
 - d. **Subcontracts.** Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.
 - e. **Payroll Records.** In addition to the clauses contained above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Contractor or subcontractor shall maintain records under this paragraph and shall make them available for inspection, copying, or transcription by authorized representatives of the Owner, the federal government that is the source of the federal funds, or the Department of Labor, and Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
16. **Penalties for Breach of Contract.** Contractor is directed to the Contract for provisions on the associated sanctions and penalties for breaching the Contract.
17. **Environmental and Natural Resource Laws.** Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and the Federal Water Pollution Control Act, as amended. Contractor shall report all violations to the federal agency providing funds for the Contract and the local Regional Office of the EPA.

END OF SECTION

SECTION 00 80 00

SUPPLEMENTARY CONDITIONS FOR PROCUREMENT CONTRACTS

These Supplementary Conditions amend or supplement the Standard General Conditions for Procurement Contracts (2010 Edition) as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.1:

In case of inconsistency between the Contract Documents and any Addenda, the Addenda supersede other Contract Documents.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.5:

The term "Proposer" shall be used interchangeably with the term "Bidder," and the term "Proposal" shall be used interchangeably with the term "Bid." The term "Contractor" shall be used interchangeably with the term "Seller".

SC-1.01. Add the following language at the end of Paragraph 1.01.A.9:

Extra Work will not be considered for a Change Order or for an adjustment in the Contract Price or the Contract Time unless the document is executed by both Buyer and Seller. Furthermore, the parties agree that under no circumstance will an act or failure to act on the part of the Buyer or Engineer constitute a waiver of the written Change Order requirement for extra or changed work. A written Change Order is a strict condition precedent for payment for extra work.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.18:

The Engineer will promptly obtain the signature of the Seller on all Field Orders. This signature confirms that the Seller is not entitled to any change in Contract Price or the Contract Time. The Engineer will endeavor to obtain the signature of the Seller on all Field Orders on a weekly basis.

SC-1.01. Add the following language at the end of Paragraph 1.01.A.30:

For purposes of giving or receiving notice, directives, change orders, or any other information from the Engineer or Buyer to the Seller, the Seller shall designate one person as Project Manager to receive such notice, directives, change orders, or other information. If the person so identified by the Seller is not present on the job site during normal working hours for any consecutive 48-hour period, the Seller shall in writing addressed to the Engineer and the Buyer identify the individual who is acting as Project Manager.

SC-2.04. Delete Paragraph 2.04.A in its entirety and insert the following in its place:

2.04.A. The Buyer will provide the successful Proposer with a Notice to Proceed at a reasonable time after the Notice of Award. The Notice of Award will be accompanied by three copies each of the Agreements and Payment and Performance Bonds in form for signatures in addition to attached exhibits. Within ten (10) days after receiving from the Buyer Notice of Award and the agreements and Bonds in form for execution, Seller shall sign and return the Agreements and furnish to the Buyer such bonds and certificates of insurance as are required herein. The Contract Time will commence to run on the day indicated on the Notice to Proceed, which shall be no later than the 30th day after the Notice to Proceed is issued. In no event will the Buyer have any obligations or duties to the Seller under the Agreement until the Notice to Proceed is given to the successful Proposer/Seller.

SC-3.04. Replace the word “may” with the words “can only” in the first line of Paragraph 3.04.A. Also, add the word “Written” before the words “Change Order” and “Work Change Directive.”

SC-3.04. Add the following to the end of Paragraph 3.04.C:

Any variations and deviations in the Work arising from any of the methods set forth in Paragraph 3.04.C. will not authorize any Amendment to the Contract Price or Contract Time. The sole method to amend the Contract Price or Contract Time is pursuant to Paragraph 3.04.A.

SC-4.02. Add the following language after Paragraph 4.02.E:

4.02.F. Include the following parties or entities as additional insured:

4.02.F.1. The City of Sandy, its officers, and employees.

4.02.F.2. Consor North America, Inc., its officers and employees, and subconsultants.

4.02.G. The limits of liability for the insurance required by Paragraph 4.02 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

4.02.G.1. Worker’s Compensation and related coverages under Paragraphs 4.02.A of the General Conditions:

4.02.G.1.a. State: Statutory.

4.02.G.1.b. Applicable Federal (e.g., Longshoreman’s): Statutory.

4.02.G.1.c. Employer’s Liability: \$500,000.

4.02.G.1.d. In accordance with ORS 279C.530, Seller shall promptly, as due, make payment to any entity furnishing care incident to sickness or injury, to employees of Seller, of all sums which Seller agrees to pay for such care and all moneys which Seller deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

4.02.G.1.e.2. Seller and Subcontractors that employ workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. Seller shall ensure that each of its Subcontractors complies with these requirements.

4.02.G.2. Seller's General Liability shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

4.02.G.2.a. General Aggregate	\$1,000,000
4.02.G.2.b. Products - Completed Operations Aggregate	\$1,000,000
4.02.G.2.c. Personal and Advertising Injury (per person/Organization)	\$ 500,000
4.02.G.2.d. Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
4.02.G.2.e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.	
4.02.G.2.f. Excess or Umbrella Liability	
1) General Aggregate	\$1,000,000
2) Each Occurrence	\$1,000,000

4.02.G.3. Automobile Liability:

4.02.G.3.a. Bodily Injury:	
Each Person	\$1,000,000
Each Accident	\$1,000,000
4.02.G.3.b. Property Damage:	
Each Accident	\$1,000,000
4.02.G.3.c. Combined Single Limit of	\$1,000,000

4.02.G.4. Contractual Liability coverage shall provide coverage for not less than the following amounts:

4.02.G.4.a. Bodily Injury:	
Each Accident	\$1,000,000
Annual Aggregate	\$1,000,000
4.02.G.4.b. Property Damage:	
Each Accident	\$ 500,000

Annual Aggregate

\$ 500,000

SC-4.03. Add the following new paragraph immediately after Paragraph 4.03.A:

4.03.B. Surety and insurance companies from which the bonds and insurance for this Project are purchased shall have an A.M. Best's rating of no less than VII in addition to other requirements specified herein.

SC-5.02. Add the following new Paragraph 5.02.B.4:

Seller agrees to assign to the Buyer at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work, and the Seller further agrees to perform the Work in such a manner to preserve any and all manufacturer's warranties.

SC-5.04. Add the following new Paragraphs to 5.04.A.2.a:

- 4) it will not materially increase anticipated maintenance or operating costs,
- 5) it is compatible with existing system components,

SC-5.08. Add the following new paragraphs immediately after Paragraph 5.07:

5.08. *Warranty*

5.08.A. Seller further warrants and guarantees to the Buyer and Engineer that all Work is guaranteed for a specified period from the date of final acceptance by the Buyer. If no warranty period is specified elsewhere in these Contract Documents, the Work shall be guaranteed for 1 year from the date of final acceptance by the Buyer. If, within the warranty period, repairs or changes are required in connection with the Work, the Seller shall promptly, without expense to the Buyer:

5.08.A.1. Place in satisfactory condition all guaranteed Work;

5.08.A.2. Correct all damage to the building, site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and,

5.08.A.3. Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.

5.08.B. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for 1 year, beginning on the date of the acceptance of the repairs, replacements or changes.

5.08.C. If the Seller fails within 10 days to proceed to comply with the terms of this warranty, the Buyer may have the defects corrected. The Seller and the Seller's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Seller and the Seller or the Seller's surety shall pay the cost.

SC-7.01. Add the following to the end of Paragraph 7.01.A:

A change in the Contract Price or the Contract Time shall be accomplished only by a written amendment, a written Change Order, or a written Work change directive. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that the Buyer has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents.

SC-7.02. Add the following to the end of Paragraph 7.02.A:

Agreements on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Contract Time. In the event a Change Order increases the Contract Price, the Seller shall include the Work covered by such Change Order in applications for payments as if such Work were originally part of the Contract Documents.

SC-9.04. Replace the last sentence of Paragraph 9.04.A with the following:

The Engineer will obtain on a weekly basis the Seller's signature on all Field Orders that will contain an acknowledgement by the Seller that the Field Order does not involve an adjustment in the Contract Price or in the Contract Time.

END OF SECTION

SECTION 01 10 00 - SUMMARY OF WORK

PART 1 GENERAL

This Section further defines the Work for the project, including project coordination requirements and work to be performed by the Owner.

1.1 DEFINITIONS

Wherever used in these Technical Specifications the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

Owner:

Refers to City of Sandy with whom Supplier has entered into the Contract to pre-purchase materials and equipment. The term "Owner" shall be used interchangeably with the term "Buyer".

Supplier:

Refers to person, firm or corporation with whom the Owner has entered into the Agreement to pre-purchase materials and equipment. The Supplier shall be responsible for fulfilling all the obligations of this contract and providing the deliverables to the Owner as specified in this document. The term "Supplier" shall be used interchangeably with the term "Seller".

Engineer:

Refers to Consor Noth America, Inc. One Columbia Street, Suite 1700, Portland, Oregon 97204, (503) 225-9010, by whom the Project has been designed.

1.2 SCOPE OF CONTRACT WORK

- A. The Work contemplated consists of furnishing/supplying, delivering, and providing start-up services for two (2) vertical turbine pumps and four (4) vertical turbine pump cans that will be incorporated into the Owner's planned Bull Run Supply Pump Station. The four pump cans will be installed by the Portland Water Bureau's (PWB) construction contractor that is currently constructing the Water Bureau's new water filtration plant facility located along Carpenter Lane in Multnomah County. The City and the PWB have an Inter-Governmental Agreement in place for the PWB's contractor to complete the installation of the four pump cans, along with some other miscellaneous suction piping, for the City at their proposed Bull Run Supply Pump Station located just north of the PWB Water Bureau's site. The two vertical turbine pumps will be installed by the City's construction contractor during the full construction of the pump station project that is anticipated to go out for public bids in spring of 2025.
- B. Supplier shall provide a submittal package for the pump and pump barrel (can) as part of the Bid Package. Refer to Section 43 21 27-1.2.C for more information on the **Bid Package Pump and Pump Barrel (Can) Submittal**.

1.3 AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

This project is being partially funded by the United States Environmental Protection Agency's (EPA) Water Infrastructure Finance and Innovation Act (WIFIA). As such, all work on this project is subject

to the Federal American Iron and Steel (AIS) requirements. Materials specified to be incorporated into this Project shall meet the AIS requirement of P.L. 113-76, Consolidated Appropriations Act, 2014. The Contractor shall adhere to all requirements stated within the Specifications and other WIFIA requirements.

See Section 01 33 00, Submittal Procedures, for information regarding certification documentation requirements. See Section 00 73 45 for additional description of the AIS requirements of this Contract.

The term “iron and steel products” means the following products made primarily (over 50% by cost) of iron or steel, including but not limited to: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

1.4 HANDLING STORAGE AND DELIVERY REQUIREMENTS

The Supplier acknowledges that all materials provided by this contract shall be delivered Free on Board (F.O.B.) to the Owner located in Sandy Oregon, exact location of Delivery will be coordinated with the Owner. Delivery arrangements shall be made by contacting the City of Sandy’s Assistant Public Works Director, AJ Thorne, at 503-489-2162. The Supplier shall transport all materials to the Bull Run Supply Pump Station site at the arranged time of delivery on weekdays only, between the hours of 7am and 4pm local time, with all materials off-loading and storage activities to be completed by 5pm daily. City of Sandy Bull Run Pump Station Site is located on the north side of the PWB Bull Run Filtration Facility site, across from 35319 SE Carpenter Lane, Gresham, OR 97080. Receipt of materials will be subject to inspection by the Owner and pump installation contractors, as applicable. Any materials damaged during the transfer of deliverables shall be replaced in kind or repaired at the Supplier’s expense as may be directed by the Owner.

Delivery shall include off-loading of all materials at the Bull Run Supply Pump Station site as identified above. Supplier shall provide off-loading services. The Owner, under no circumstances, will move or dedicate equipment or labor to move the deliverables.

Final acceptance of materials will be subject to inspection and testing by the Owner. Final payment for materials will be made following Owner inspections, approvals and acceptance.

1.5 GUARANTY PERIOD

A. Performance Warranty

The Supplier hereby warrants to the Owner that all materials provided in this contract will be new and shall conform to these specifications and shall be free of mechanical, structural or other defects that may develop or become evident within a period of thirty six (36) months from final delivery. It is understood that the above warranty shall apply to work done and to materials furnished by subcontractors of the Supplier as well as to work done by persons directly employed by the Supplier. Warranties and guarantees by the suppliers of various components in lieu of a single source responsibility by the Supplier will not be accepted.

B. Handling, Storage and Security Warranty

1. The Supplier warrants all materials during storage at the Supplier's site and during transport to the Owner's site. Any damages incurred during handling, storage and transport for materials respective to each Supplier shall be replaced in kind at each respective Supplier's expense.
2. Upon acceptance and receipt of delivery in full to the Owner, all handling, storage and security warranties shall be considered fulfilled by the Supplier.
3. Delivery of materials and acceptance by the Owner will in no way release the Supplier from the performance warranty. The warranty period for all materials supplied shall be thirty-six (36) months from the final installation, project startup and final acceptance by the Owner.

1.6 SUBMITTALS

A. Schedules

The Supplier, within fifteen (15) days after notice to proceed, shall prepare and submit to the Engineer a practicable schedule showing the order in which work will start and the contemplated completion dates. The schedule shall indicate clear landmarks for progress to completion. The Engineer may require the Supplier to submit updated schedules at regular intervals as materials preparation progresses.

B. Shop Drawings

The Supplier shall provide shop drawings, schedules and such other drawings as may be necessary for the prosecution of the work in the shop and in the field as required by the contract documents or the Engineer's instruction.

Within fifteen (15) days after award of the contract, the Supplier shall submit to the Engineer the submittal for the vertical turbine pump cans.

The Engineer will review shop drawings to determine compliance with the design concept of the project and return them to the Supplier within five (5) working days following receipt from the Supplier. The Engineer may hold shop drawings in cases where partial submission cannot be reviewed until the complete submission has been received or where shop drawings cannot be reviewed until correlated items affected by them have been received. When such shop drawings are held, the Engineer will advise the Supplier in writing that the shop drawing submitted will not be reviewed until shop drawings for all related items have been received.

The Engineer will review the submitted data and shop drawings, and will make notations thereon indicating "No Exception Taken", "Make Corrections Noted", "Rejected", "Revise and Resubmit", or "Submit Specified Item". The Engineer's review of submittals and shop drawings is not a check of any dimension or quantity, and will not relieve the Supplier from responsibility for errors of any sort in the submittals and shop drawings.

When shop drawings and/or submittals are required to be revised or corrected and resubmitted, the Supplier shall make such revisions and/or corrections and resubmit those items or other materials in the same manner as specified above.

Submitted data shall be sufficient in detail for determination of compliance with the Contract Documents. Color samples for all items for which colors are to be selected shall be submitted at the same time. No equipment or material for which listings, drawings, or descriptive material is required shall be installed until the Supplier has received review from the Engineer.

Regardless of corrections made in or review given to the drawings by the Engineer, the Supplier shall be responsible for the accuracy of such drawings and for their conformity to the plans and specifications. The Supplier shall check all submittals before submitting them to the Engineer and shall stamp his approval on all copies of the shop drawing documents. Any submittals received by the Engineer which do not bear the Supplier's approval shall be returned without review. If more than two (2) submissions are required to meet the project specifications, the cost of reviewing these additional submissions may be charged directly against the Supplier and the Owner may withhold the funds necessary to cover these costs.

Materials and equipment shall be ordered a sufficient time in advance to allow time for reviews, and shall be available on the job when needed. Last minute review will not be given for inferior substitutes for material or equipment.

See additional requirements in specification Section 01 33 00-Submittal Procedures.

C. Storage and Handling Plans

No later than four (4) weeks prior to the first shipment delivery, the Supplier shall submit a yard plan clearly identifying the location and measures to protect the equipment and materials stored on the Owner's site. In addition, the Supplier shall submit drawings showing the method for enclosing fittings to protect applied coatings. Suitable storage and protection of equipment shall consist of but not limited to the following items:

1. Storage of products in accordance with the manufacturer's instructions, with seals and labels intact and legible.
2. Store all coated piping above ground, padded on some type of blocking, skids, or trailers which will prevent damage to coatings.
3. Store all fittings and specials in segmented compartmentalized and padded pallets so as to prevent any metal to metal contact.
4. Arrange storage in a manner to provide easy access for inspection. Make periodic inspections of stored products to assure that products are maintained under specified conditions, and free from damage or deterioration.
5. Provide substantial coverings, fencing, and bordering as necessary to protect installed products from damage due to traffic and subsequent operations.
6. Provide security necessary to ensure products are secure and protected from damage by vandalism.

7. Provide permanent, labeled, packing for spare parts to be delivered at the time of contract delivery.
8. Supplier shall package materials and equipment in a manner that is suitable for the above storage conditions and as specified.

D. Affidavit of Compliance

Supplier shall provide affidavit stating that all equipment and materials supplied comply with these specifications and referenced standards. Such affidavit shall include certifications from materials manufacturer's and coatings applicators that respective specifications have been complied with.

1.7 FIELD SERVICE BY MANUFACTURER'S REPRESENTATIVE

It is the intent of the Owner to have a complete and operable facility. Equipment supplied under this contract will be fully tested and inspected in accordance with the specifications. During the installation of materials, by others, the Supplier shall provide for the services of the pipe manufacturer's representative to oversee for up to two (2) days total time, specified field construction relating to the installation of specials and pipe materials. The Supplier shall also provide for up to two (2) days, services from the coating manufacturer to train Contractor staff and to oversee any required field repair work. Upon completion of the work, completed facilities will be operated as required to test the equipment under the direction of the ENGINEER. During this period of operation, the new facilities will be tested thoroughly to determine their acceptance based on performance.

1.8 COORDINATION WITH OTHER CONTRACTORS AND WITH OWNER

Certain work within this contract may require connection to and coordination with the work of other contractors and Owner. The Supplier under these specifications shall cooperate fully with all other contractors and Owner and carefully fit its own work to such other work as may be directed by the Engineer. The Supplier shall not commit or permit any act to be committed which will interfere with the performance of work by any other contractor or the Owner.

1.9 ACCESS TO WORK

Access to the work shall be provided as may be required by the Owner or his representatives, and all authorized representatives of the state and federal governments and any other agencies having jurisdiction over any phase of the work, for inspection of the progress of the work, the methods of construction or any other required purposes.

1.10 "OR EQUAL" CLAUSE

In order to establish a basis of quality, certain processes, types of machinery and equipment or kinds of material may be specified on the drawings or herein by designating a manufacturer's name and referring to its brand or product designation. It is not the intent of these specifications to exclude

other processes, equipment or materials of a type and quality equal to those designated. When a manufacturer's name, brand, or item designation is given, it shall be understood that the words "or equal" follow such name or designation, whether in fact they do so or not. If the CONTRACTOR desires to furnish items of equipment by manufacturers other than those specified, he shall secure the approval of the ENGINEER prior to placing a purchase order.

No extras will be allowed the CONTRACTOR for any changes required to adopt the substitute equipment. Therefore, the CONTRACTOR's proposal for an alternate shall include all costs for any modifications to the drawings, such as structural and foundation changes, additional piping or changes in piping, electrical changes or any other modifications which may be necessary or required for approval and adoption of the proposed alternate equipment. Approval of alternate equipment by the ENGINEER before or after bidding does not guarantee or imply that the alternate equipment will fit the design without modifications.

1.11 NOISE LIMITATIONS

All applicable County ordinances and State regulations shall be complied with.

PART 2 MATERIALS AND PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SECTION 01 22 20 - UNIT PRICE MEASUREMENT AND PAYMENT**PART 1 GENERAL**

Measurement and payment will be on a unit price basis in accordance with the prices set forth in the proposal for the individual work items. Where work is required but does not appear as a separate item in the proposal, the cost for that work shall be included and absorbed in the unit prices named in the proposal. Basis of measurement and payment for individual bid items will be as follows:

- 1.1 Furnish and deliver two vertical turbine pumps and motors: Measurement and payment will be on a lump sum basis to furnish and deliver the vertical turbine pumps and motors as specified and as shown. Supplier shall provide field testing, startup, and training services under separate bid item below.
- 1.2 Furnish and deliver four Vertical Turbine Pump Cans: Measurement and payment will be on a lump sum basis to furnish and deliver the vertical turbine pump cans as specified and as shown.
- 1.3 Provide Pump Startup Services: Measurement and payment will be on a lump sum for Supplier to provide field testing, startup, and training assistance services to the installing Contractor.

END OF SECTION

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SECTION 01 33 00 - SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 SUMMARY

- A. This Section contains administrative and procedural requirements for submittals for review, information, and for Project closeout.
- B. Section includes:
 - 1. Submittal requirements.
 - 2. Submittal procedures.
 - 3. Engineer review.
 - 4. Resubmittal procedures.
 - 5. Product data.
 - 6. Shop Drawings.
 - 7. Samples.
 - 8. Design data.
 - 9. Test reports.
 - 10. Certificates.
 - 11. Manufacturer's instructions.
 - 12. Manufacturer's field reports.
 - 13. Operation and maintenance (O&M) instructions.

1.2 DEFINITIONS

- A. Action Submittals: Written and graphic information and physical samples that require Engineer's responsive action.
- B. Informational Submittals: Written and graphic information and physical Samples that do not require Engineer's responsive action. Submittals may be rejected for not complying with requirements.

1.3 SHOP DRAWING AND SAMPLE SUBMITTAL REQUIREMENTS

- A. Before submitting a Shop Drawing or Sample, Supplier shall have:
 - 1. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - 2. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - 3. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- B. With each submittal, Supplier shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This

notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review of each such variation.

1.4 SUBMITTAL PROCEDURES

- A. Transmit each submittal with Engineer-accepted transmittal form certifying compliance with requirements of Contract Documents.
- B. Sequentially number transmittal forms. Mark transmittal forms for resubmittals with original number and sequential alphabetic suffix.
- C. Show each Submittal with the following numbering and tracking system:
 - 1. Submittals shall be numbered according to specification section. For example, the first product submittal for Section 05 50 00 would be "05 50 00-1". Resubmittals of that submittal would be "05 50 00-1.1", followed by "05 50 00-1.2", and so on. The second product submittal for that Section would be "05 50 00-2".
 - 2. Alternative method of numbering may be used if acceptable to Engineer.
- D. Identify: Project, supplier, pertinent drawing and detail number, and specification Section number appropriate to submittal.
- E. Coordinate submission of related items.
 - 1. All shop drawings for interrelated items shall be scheduled for submission at the same time.
 - 2. The Engineer may hold shop drawings in cases where partial submission cannot be reviewed until the complete submission has been received or where shop drawings cannot be reviewed until correlated items affected by them have been received. When such shop drawings are held, the Engineer will advise the Supplier in writing that the shop drawing submitted will not be reviewed until shop drawings for all related items have been received.
- F. When electronic transmittals of submittals are provided by the Supplier under established protocols described elsewhere in the Contract Documents or as jointly developed by the Owner, Engineer and Supplier, provide electronic submittals in portable document format (PDF) in addition to the source document format (Word, Excel, AutoCAD, etc.). Reviewed submittals will be returned to the Supplier as PDF electronic files.
- G. For each submittal for review, allow not less than 14 days for Engineer review, excluding delivery time to and from Supplier.
- H. Identify variations in Contract Documents and product or system limitations that may be detrimental to successful performance of completed Work.
- I. When revised for resubmission, the Supplier shall identify changes made since previous submission. A narrative of changes shall be provided, and shop drawings or calculations shall indicate that a revision was made.

- J. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with review comments.
- K. Submittals not requested will not be recognized nor processed.
- L. Incomplete Submittals: Engineer will not review. Complete submittals for each item are required. Delays resulting from incomplete submittals are not the responsibility of Engineer.

1.5 ENGINEER REVIEW

- A. Informational submittals and other similar data are for Engineer's information, do not require Engineer's responsive action, and will not be reviewed or returned with comment.
- B. The Engineer's review of submittals and shop drawings is not a check of any dimension or quantity and will not relieve the Supplier from responsibility for errors of any sort in the submittals and shop drawings.
- C. Submittals made by Supplier that are not required by Contract Documents may be returned without action.
- D. The Engineer will review the submitted data and shop drawings and return to the Supplier with notations thereon indicating "No Exception Taken", "Make Corrections Noted", "Rejected", "Revise and Resubmit", or "Submit Specified Item".
- E. Engineer's review will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
- F. Engineer's review of a separate item as such will not indicate approval of the assembly in which the item functions.
- G. Engineer's review of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order
- H. Neither Engineer's receipt, review, return of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

1.6 RESUBMITTAL PROCEDURES

- A. Supplier shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review. Supplier shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- B. Supplier shall furnish required submittals with sufficient information and accuracy to obtain required review of an item with no more than two submittals. Engineer will record Engineer's time for reviewing a third or subsequent submittal of a Shop Drawings, sample, or other item requiring review, and Supplier shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Supplier to secure reimbursement for such charges.

- C. If Supplier requests a change of a previously reviewed submittal item, Supplier shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Supplier to secure reimbursement for such charges, unless the need for such change is beyond the control of Supplier.

PART 2 PRODUCTS

2.1 PRODUCT DATA

- A. Product Data: Action Submittal: Submit to Engineer for review for assessing conformance with information given and design concept expressed in Contract Documents. Submitted data shall be sufficient in detail for determination of compliance with the Contract Documents.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement Manufacturers' standard data to provide information specific to this Project.
 - 1. Note submittal will be returned to Supplier without review of submittal if products, models, options, and other data are not clearly marked or identified.
- C. Indicate product utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.

2.2 SHOP DRAWINGS

- A. Shop Drawings: Action Submittal: Submit to Engineer for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Indicate special utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- C. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional Engineer licensed in the state of Project, responsible for designing components shown on Shop Drawings.
 - 1. Include signed and sealed calculations to support design.
 - 2. Submit Shop Drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
 - 3. Make revisions and provide additional information when required by authorities having jurisdiction.
- D. All dimensioned shop drawings shall be scalable and provided as full-sized (22-inch x 34-inch) sheets. PDF electronic files shall print as scalable full-sized sheets.
- E. After review, produce copies and distribute according to Paragraph 1.5.M and for record documents.

2.3 DESIGN DATA

- A. Informational Submittal: Submit data for Engineer's knowledge as Contract administrator or for Owner.
- B. Submit information for assessing conformance with information given and design concept expressed in Contract Documents.

2.4 TEST REPORTS

- A. Informational Submittal: Submit reports for Engineer's knowledge and records as Contract administrator or for Owner.
- B. Submit test reports for information for assessing conformance with information given and design concept expressed in Contract Documents.

2.5 CERTIFICATES

- A. Informational Submittal: Submit certification by Manufacturer, installation/application Subcontractor, or Supplier to Engineer, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- C. Certificates may be recent or previous test results on material or product but must be acceptable to Engineer.

2.6 MANUFACTURER'S INSTRUCTIONS

- A. Informational Submittal: Submit Manufacturer's installation instructions for Engineer's knowledge as Contract administrator or for Owner.
- B. Submit printed instructions for delivery, storage, assembly, installation, startup, adjusting, and finishing, to Engineer in quantities specified for Product Data.
- C. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

2.7 MANUFACTURER'S FIELD REPORTS

- A. Informational Submittal: Submit reports for Engineer's knowledge and records as Contract administrator or for Owner.
- B. Submit report within 48 hours of observation to Engineer for information.
- C. Submit reports for information for assessing conformance with information given and design concept expressed in Contract Documents.

2.8 OPERATION AND MAINTENANCE (O&M) INSTRUCTIONS

- A. Submit preliminary O&M materials for review by Engineer. The Equipment Manufacturer may furnish instruction manuals prepared specifically for the equipment furnished or standard manuals may be used if statements like "if your equipment has this accessory..." or listings of equipment not furnished are eliminated. O&M materials will be returned to the Supplier for resubmittal if the O&M materials do not clearly indicate what specific equipment was furnished and all items not provided being clearly crossed out. Poorly reproduced copies are not acceptable. Operation and maintenance instructions shall contain the following as a minimum:
1. Reviewed shop drawings and submittal data;
 2. Model, type, size, and serial numbers of equipment furnished;
 3. Equipment and driver nameplate data;
 4. List of parts showing replacement numbers;
 5. Recommended list of spare parts;
 6. Complete operating instructions including start-up, shutdown, adjustments, cleaning, etc.;
 7. Maintenance and repair requirements including frequency and detailed instructions; and
 8. Name, address and phone numbers of local representative and authorized repair service.

Submit electronic copies of the draft operation and maintenance (O&M) manual for Engineer's review at least two (2) weeks prior to start-up, which will be reviewed and returned to Supplier with Engineer's comments.

- B. Following review of the preliminary O&M materials by the Engineer and before acceptance of the Work, submit four copies of complete final operation and maintenance instructions for all equipment supplied. Submit items in 8-1/2 x 11-inch heavy-duty three-ring binders when appropriate, or in 8-1/2 x 11-inch file folders. All binders and folders shall have clear plastic pockets on the front of the cover and the spine to allow for insertion of identifying information.

Electronic Copies: In the final O&M Manual, enclose one electronic copy of the manual in each hard-copy version. The file and folder structure of the electronic copy is to mirror the tabbed structure of the hardcopy. Electronic documentation shall be provided on standard thumb drive capable of being read by standard PC. All documents shall be provided in Adobe Systems portable document format (PDF), viewable with Adobe Reader, latest version. Where possible, the PDF documents shall be produced using a printer driver engine. Documents for which no electronic form exists may be scanned at 100 percent image scaling and a resolution of 300 dpi or better. All PDF files shall be text captured, image with hidden text, optimized, searchable, and indexable using the Adobe Acrobat Catalog engine. Drawings generated in AutoCAD shall be provided as both DWG files and PDF files.

PART 3 EXECUTION - Not Used

END OF SECTION

**SECTION 13 05 41 - DESIGN LOAD AND RESTRAINT REQUIREMENTS FOR
NON-STRUCTURAL COMPONENTS AND SYSTEMS**

PART 1 GENERAL

1.1 SUMMARY

- A. Section Includes architectural, plumbing, mechanical, and electrical building components and systems, non-structural components, and non-building structures that are designed and constructed for seismic demands. Exempt components include those that are specifically exempted in ASCE 7 and the items below:
1. Temporary or movable equipment.
 2. Furniture, except storage cabinets greater than 6' tall
- B. Design, detail and provide complete restraint and anchorage systems for all environmental and operational loads to include seismic, wind, hydraulic, vibrational or other anticipated loading.
- C. Provide equipment and product certifications to be submitted for review by the Owner. The following systems and components are Designated Seismic Systems and specifically require Special Certification per ASCE 7-16, Section 13.2:
1. Electrical Equipment:
 - a. Motor control centers (MCCs)
 - b. I&C panels and cabinets
 - c. Variable frequency drives (VFDs)
 - d. Switchgears
 - e. Automatic transfer switches
 - f. Standby generators
 - g. Electrical panels
 - h. Transformers
 2. Mechanical Equipment:
 - a. HVAC Systems, Ventilation fans and ducts
 3. Components with Hazardous Substances:
 - a. Chemical storage tanks and saturators
 4. Distribution Systems
 - a. Piping
 - b. Valves
 - c. Flowmeters
 - d. Vertical turbine pumps
 5. Other Equipment and Components:
 - a. None

1.2 DEFINITIONS AND ABBREVIATIONS

- A. Anchorage: Connection to structure typically through the use of welding, bolts, screws, anchor bolts, post-installed anchors or other fasteners selected to meet the Building Code.
- B. Authority Having Jurisdiction (AHJ): The governmental agency or sub-agency that regulates the construction process. This may be a local building department, state agency, federal entity or other body or bodies having statutory authority.
- C. Code or Building Code: Building Code currently in effect where the Project is located. For the purposes of this project, the term Building Code collectively refers to: 2022 OSSC, ASCE 7-16, and 2021 IBC (In the order listed).
- D. Designated Seismic System: Those architectural, electrical and mechanical systems and their components that require seismic design or qualification in accordance with ASCE 7 and for which the component importance factor, I_p , is 1.5 according to ASCE 7.
- E. International Accreditation Service, Inc. (IAS).
- F. International Building Code (IBC).
- G. International Code Council Evaluation Service (ICC-ES).
- H. Inspection Agency: Organization or individual accredited to ISO 17020 and regularly engaged in factory inspection services for seismic restraint or qualification of non-structural components and equipment.
- I. Nonstructural Component: A part or element of an architectural, electrical or mechanical system permanently attached to a structure including its supports and attachments.
- J. Oregon Health Authority – Drinking Water Services (OHA-DWS).
- K. Oregon Structural Specialty Code (OSSC)
- L. Restraint/Bracing: Bracing or anchorage used to limit movement under seismic forces. Cables or rigid elements, i.e., strut, pipe, and angles, used to resist forces by uniaxial tension or compression. Term "bracing" may also be used to describe design to resist lateral forces through the use of wall or frame elements.
- M. Seismic Deformations: Drifts, deflections, and relative displacements determined in accordance with the applicable seismic requirements of the Building Code.
- N. Seismic Demand: Forces and deformations caused by a Code seismic event that must be resisted or accommodated by a structure, component, or system.
- O. Seismic Forces: Forces acting in any direction due to the action of an earthquake as defined in the Building Code.
- P. Seismic Guidelines and Minimum Design Requirements (SGMDR).
- Q. Special Inspector: An IAS accredited OSSC Special Inspection Agency or qualified Professional Engineer who demonstrates competence, to the satisfaction of the building official (or

Authority Having Jurisdiction (AHJ)), for inspection of the Designated Seismic System. The Owner will employ one or more Special Inspectors to provide periodic inspections during installation of Designated Seismic Systems.

- R. Structural Engineer of Record (SER).
- S. Support: Elements used to support the weight (gravity load) of an item. Where the support is located at a seismic brace, the element may also resist tension/compression reactions from the restraint system.
- T. Supporting structure: Typically, a building floor, roof, wall, etc.
- U. Vibration Isolation and Seismic Control Manufacturers Association (VISCMA).

1.3 REFERENCE STANDARDS

- A. American Concrete Institute (ACI):
 1. ACI 355.2 – Qualification for Post-Installed Mechanical Anchors in Concrete and Commentary
 2. ACI 318 – Building Code Requirements for Structural Concrete including Chapter 17 – Anchoring to Concrete (2014)
 3. ACI 350 – Code Requirements for Environmental Engineering Concrete Structures and Commentary (2006)
 4. ACI 350.3 – Seismic Design of Liquid-Containing Concrete Structures and Commentary (2006)
- B. American Society of Civil Engineers (ASCE)
 1. ASCE 7 – Minimum Design Loads for Building and Other Structures (2016)
 2. ASCE 41 - Seismic Evaluation and Retrofit of Existing Buildings (2017)
- C. ASTM International
 1. ASTM E488 – Standard Test Methods for Strength of Anchors in Concrete Elements
- D. Electric Power Research Institute (EPRI)
 1. Experience-based Seismic Equipment Qualification, EPRI Report # 1016125 (EPRI Project Manager R. Kassawara), December 2007.
- E. Federal Emergency Management Agency (FEMA):
 1. FEMA 461 – Interim Testing Protocols for Determining the Seismic Performance Characteristics of Structural and Nonstructural Components
- F. Institute of Electrical and Electronics Engineers, Inc. (IEEE)
 1. IEEE C37.81 - Guide for Seismic Qualification of Class 1E Metal-Enclosed Power Switchgear Assemblies (2017)

- G. International Code Council (ICC)
 - 1. 2019 Oregon Structural Specialty Code (2019 OSSC)
 - 2. 2018 International Building Code (2018 IBC)
- H. International Code Council Evaluation Service (ICC-ES)
 - 1. AC156 Seismic Certification by Shake-table Testing of Nonstructural Components, Approved October 2010; editorially revised May 2015.
- I. International Organization for Standardization (ISO)
 - 1. ISO/IEC 17020 – Conformity assessment -- Requirements for the operation of various types of bodies performing inspection (2012; reviewed and confirmed in 2017)
- J. National Fire Protection Association (NFPA)
 - 1. NFPA 13 – Installation of Sprinkler Systems (2019)
- K. Where reference is made to one of the above standards or guidance documents, the revision in effect by reference in the model code at the time of bid opening shall apply, unless otherwise noted.

1.4 SUBMITTALS

- A. Product Data: For each type of product.
- B. Qualifications
 - 1. Professional Engineer Qualifications: Submit certification and experience documentation for the Professional Engineer performing engineering calculations to demonstrate compliance with the Special Seismic Certification requirements or other seismic calculations, indicating a minimum of 5 years' experience providing engineering services of the kind indicated when analysis or shake table testing is the justification for the Certification for each Designated Seismic System.
 - a. Qualified Mechanical Analysis Contact: Andy Lerche, Mechanical Solutions Incorporated, <https://www.mechsol.com/>
 - 2. Qualified Inspection Agency: A qualified IAS accredited Inspection Agency shall witness the shake table testing. Submit qualification of the qualified Inspection Agency, minimum 5-year experience records performing shake-table testing for Special Seismic Certification purpose, and qualifications of the inspection personnel overseeing the shake table testing.
- C. Shop Drawings:
 - 1. Delegated-Design Submittals: Prepare, seal, and sign restraint and anchorage Shop Drawings consisting of design drawings and supporting calculations signed by a Professional Structural or Mechanical Engineer registered in the State of Oregon. Indicate restraint details including materials, quantities, anchor bolts, size and embedment of anchor bolts, base plate setting details and locations, and location, direction and magnitudes of project related loads transferred to the structure.

2. Include sufficient information regarding the component attachments to verify compliance with applicable codes and standards.
 3. Use of proprietary restraint systems with a Certificate of Compliance verified and listed by an IAS accredited Inspection Agency is acceptable, provided that the seismic requirements for the project are met and the submittal has been reviewed and approved by SER.
- D. Calculations:
1. Prepare, seal, and sign calculations by a Professional Structural or Mechanical Engineer registered in the State of Oregon and submit with Shop Drawings.
 2. Include sufficient information regarding component attachments to verify a continuous load path of sufficient strength and stiffness that demonstrates compliance with applicable codes and standards.
- E. Special Seismic Certification of Designated Mechanical Equipment, Electrical Equipment, Distribution Systems, and other Equipment:
1. Each manufacturer of a Designated Seismic System shall submit a Certificate of Compliance, per ASCE 7-16, Section 13.2.1.2, indicating the following:
 - a. Equipment and its components satisfy the seismic qualification requirements herein (in PART 2)
 - b. Seismic qualification was done in accordance with the qualification methods herein (in PART 3).
 - c. Components, their mounting system, and anchorage meet the Special Certification requirements per ASCE 7-16, Section 13.2, to withstand required loading demands with a Component Importance Factor of 1.5 and are capable of being immediately operational following the design earthquake per the criteria in the project drawings.
 - d. Basis for Certification: Indicate whether certification is based on actual test of assembled components, supports and attachments, or based on experience based seismic qualification, or on calculation/ analysis of them.
 - e. The entity (i.e., manufacturer or qualified testing agency) that performed the seismic qualification testing, and the qualified testing agency that witnessed the testing.
 - f. The professional engineer that performed the engineering calculations that demonstrate the compliance of the Special Seismic Certification requirements.
 - g. Dimensioned Outline Drawings of Component: Identify center of gravity and locate and describe mounting, supports and attachment provisions.
 - h. Specifications for, and drawings of, the component, supports and attachments as necessary to install component in a manner consistent with the certification shall be provided.

- i. If anchorage to concrete applies to component attachment, provide detailed description of anchorage products/ devices on which the certification is based and their installation requirements.
 - 1) The description must clearly indicate how the use of the products will result in compliance with the anchorage requirements of ACI 318.
2. Submit evidence and supporting materials associated with the Certificate of Compliance that demonstrates the functional seismic qualification, as follows:
 - a. When the qualification is by testing, supporting material shall include Seismic Qualification Report (SQR) including all data, results and conclusions.
 - b. The SQR shall include the following content as a minimum:
 - 1) Title Page - The following information shall be shown on the title page:
 - a) Client
 - b) Supplier and Component Name
 - c) Specification Package Number/ Identification
 - d) Revision Number
 - e) Date
 - 2) General: A description of the component, its function and the method of qualification used to verify this function. In addition, the following information must be given:
 - a) Project and owner names.
 - b) Specification and purchase order numbers.
 - c) Component Name and Identification/number.
 - d) Organization(s) performing qualification programs.
 - 3) Data and Assumptions
 - a) Testing Section: The following data shall be included: Type of testing machine; Loads considered and simulated during the test; Methods used to simulate the supporting structure, details of the attachment to the supporting structure and/or testing machine; Position and orientation of setting component (photographs are recommended); Steps taken to monitor the function of component during the test and accelerometer locations and orientations (photographs are recommended); Means of generating test response spectra (if applicable);
 - b) Analytical Section: The following data shall be presented: Loads considered; Damping values used in the analysis; Codes and standards used as bases for the analysis; Assumptions and engineering judgements made for idealizing boundary conditions, converting the load criteria to actual loads used for analyses/ calculations and converting the design criteria to actual stress, deformation and stability limits. Justification shall be provided for all assumptions and engineering judgements used; and A list of the computer programs and software revision numbers, to keep track of verification and

validation (V&V), used in the analysis and the documentation which establish the validity of any computer program used, if not included in the public domain.

4) Qualification Procedure

- a) Testing Section: State type of test, wave form, frequency intervals and range, acceleration levels, axes of excitation, phase between inputs monitoring set-up and any other data to completely describe the input motion and show it is applied.
- b) Analytical Section: State the method used in the analysis, mathematical equations and their derivation from basic principles including appropriate references.

5) Results

- a) Testing Section: This section shall include the measurements obtained from the test and their interpretations. Findings and observations from monitoring the function of the component and/or inspection shall be presented. All results shall be presented in either numerical or graphical form.
- b) Analytical Section: Show actual design calculations and sketches for the mathematical models, including numbering used for the node points and numbers. If possible, show loads, resultant forces, moments, stresses and deformations on the mathematical model of the component.

6) Supporting-Structure Loads

- a) The loads transmitted by the component to the supporting structure, calculated in the previous section, shall be presented in this section.

7) Conclusions

- a) Give a brief summary of the results obtained from the qualification program. A concise statement of the conclusion reached, which should satisfy the qualification requirements, shall be stated in this section.

8) Drawings and Specifications

- a) Include dimensioned outline drawings of component. Identify center of gravity and locate and describe mounting and attachment provisions.
- b) Include drawings of, and specifications for, the component, supports and attachments as necessary to install component in a manner consistent with the certification shall be provided.
- c) If anchorage to concrete applies to component attachment, provide detailed description of anchorage products/ devices on which the certification is based and their installation requirements. Description must clearly indicate how the

use of the products will result in compliance with the anchorage requirements of ACI 318.

- c. When the qualification is by experience, supporting material shall include
 - 1) Basis for the conclusion that the component meets the Special Seismic Certification requirements herein, through Qualification by Experience requirements established herein.
 - 2) Supporting engineering calculations signed and sealed by a Professional Structural or Mechanical Engineer registered in the State of Oregon and submitted to the Owner for acceptance.
- d. When the qualification is by analysis, supporting material shall include
 - 1) Supporting engineering calculations signed and sealed by a Professional Structural Mechanical Engineer registered in the State of Oregon and submitted to the Owner for acceptance.

1.5 QUALITY ASSURANCE

- A. Comply with the Oregon Structural Specialty Code (OSSC 2019) and any modifications by the jurisdiction where the Project is located and applicable local and statewide adopted amendments.
- B. Special Seismic Certification: Provide Certification in accordance with OSSC, Chapter 17 and ASCE 7 Chapter 13 and 15 for Special Certification Requirements for Designated Seismic Systems.
- C. Provide Special Inspections for installation, inspection and testing of the following per OSSC Chapter 17:
 - 1. Designated seismic systems shall be examined and verify that the label, anchorage or mounting conforms to the certificate of compliance.
 - 2. Architectural and Mechanical Components: Periodic special inspection in accordance with Section 1705.11.5 & 1705.11.6.
 - 3. Seismic Isolation systems: Periodic special inspection in accordance with Section 1705.11.8.

1.6 FIELD QUALITY CONTROL

- A. Special Seismic Certifications:
 - 1. Verify that the label, anchorage and mounting conform to the Certificate of Compliance for Designated Seismic Systems.

PART 2 PRODUCTS

2.1 SYSTEM DESCRIPTION

- A. Provide restraint of nonstructural components to withstand loading demands without displacing or overturning.
- B. Provide non-building structures designed and constructed to withstand loading demands as specified herein.
- C. For Designated Seismic Systems, provide installations capable of providing post-earthquake functionality.

2.2 PROJECT DESIGN CRITERIA

- A. Seismic:
 - 1. Minimum Seismic Design Requirements: Per ASCE 7-16 and the following additional SGMDR requirements:
 - a. Per Structural Drawings.
 - 2. Seismic Design Parameters:
 - a. Per Structural Drawings.
 - 3. Seismic Design Category: Per Structural drawings.
 - 4. Seismic Design Force: Base calculation of seismic design force on requirements of ASCE 7 including Chapter 11 through Chapter 15, and the seismic design parameters above.
 - 5. Seismic design forces for submerged components and equipment: Design of components and equipment that are submerged within tanks, reservoirs, water retention structures, etc. are to include the hydrodynamic forces. The forces due to hydrodynamic effects can be represented by the addition of an equivalent mass of water. Estimates of hydrodynamic forces shall be in accordance with ASCE 7-16, ACI 350.1-06, Goyal and Chopra (1989) described in USACE (2003).
 - a. Component analysis for columns and other compression members shall include secondary P-Delta effects caused by gravity and seismic loads.
 - b. Components located above static fluid surfaces to be designed for hydrodynamic sloshing forces.
 - c. If equipment components cannot be designed to resist hydrodynamic forces, the structural engineer for the equipment manufacturer shall predetermine strategic break points for approval by Engineer and Owner. The predetermined strategic break points shall be located such that these components can be easily replaced. In addition, flexible restraints (tethers) should be provided for "breakaway" components in order to keep broken elements off the structure's floor.

6. Seismic Relative Displacement:

- a. Design of the structural separation shall accommodate seismic relative displacement of 0.015 times the story height in addition to thermal movement that may be present.
- b. Design of the non-structural components shall accommodate seismic relative displacement calculated per ASCE 7-16, Section 13.3.2.

B. Wind:

1. Per Structural Drawings.

C. Other:

1. Operational loading as determined by component manufacturer.
2. Special loads as indicated on drawings or specifications.

2.3 SEISMIC QUALIFICATION REQUIREMENTS

A. Qualification shall be based on testing, analysis or testing per ASCE 7 Chapter 13, as noted below, or a combination of analysis and testing per subsequent portions of this Section.

1. Shake table test data in accordance with ASCE 7-16 Section 13.2.5, per ICC-ES AC156 (ICC-ES 2015) testing standard procedure.
2. Experience data in accordance with ASCE 7-16 Section 13.2.6.
3. Analysis according to sections 13.2 to 13.6 of ASCE 7-16 demonstrating compliance

B. Qualification shall demonstrate that the component, and its support(s) and attachment(s), is capable of achieving the seismic performance requirement(s) indicated in the Project Design Criteria herein.

1. Seismic Performance Requirement: Position retention and functional/operable following the design earthquake per the seismic criteria in the SGMDR.
2. The horizontal component of seismic load acting on a Designated Seismic Systems component shall be determined based on the Seismic Parameters provided herein and component response modification factor (R_p) parameters defined in ASCE 7-16, Section 13.3.1.

2.4 MATERIALS

A. Anchor Bolts and Post-Installed Anchors:

1. Cast-in Anchor Bolts or Headed Studs: Use whenever possible and design in accordance with Section 1912 of the OSSC and ACI 318 Chapter 17. Do not use post-installed expansion anchors for critical fastening such as vibrating conditions and impact loads.
2. Expansion or Sleeve Anchors: Pre-qualify for use in seismic applications per ASTM E488 and current ICC-ES evaluation reports.

3. Adhesive Anchors: Pre-qualify for use in seismic applications per ASTM E488 and current ICC-ES evaluation reports.
4. For components weighing over 400 pounds: Minimum 5/8-inch diameter anchor size with minimum 5-inch embedment.
5. For components weighing less than 400 pounds: Minimum 3/8-inch diameter anchor size with minimum 3-inch embedment.

PART 3 EXECUTION

3.1 SEISMIC QUALIFICATION METHODS

- A. The seismic qualification of a component, to include its support(s) and attachment(s), is achieved by demonstrating it is capable of achieving its seismic performance requirement when subjected to the design earthquake per the seismic criteria specified herein. Regardless of the qualification program(s) chosen, the applicable seismic performance requirements shall be as stated in the applicable table in PART 2 (herein). One of the following qualification methods shall be used:
 1. Qualification by testing.
 2. Qualification by experience.
 3. Qualification by analysis.
 4. A combination of the aforementioned testing and analysis, for which there are two options:
 - a. Qualification testing supported by analysis (i.e., "supporting analysis").
 - b. Qualification analyses supported by testing (i.e., "supporting tests").
- B. Qualification by Testing:
 1. The use of the qualification-testing method solely is appropriate when at least one of the following conditions apply:
 - a. The structural configuration of the component is extremely complex and/ or beyond the capability of mathematical modeling techniques.
 - b. The response of the component is expected to be significantly nonlinear.
- C. Qualification by Experience:
 1. The use of the qualification-testing method solely is appropriate when:
 - a. Component qualifies under OSSC 1705.13.2.

D. Qualification by Analysis:

1. The use of the qualification-analysis method solely is appropriate when at least one of the following conditions apply:
 - a. The structural configuration of the component is simple and/or within the capability of mathematical modeling techniques.
 - b. The response of the component is expected to be linear or exhibit simple nonlinear behavior.
 - c. The effect of attached components and the superposition of load conditions are too complex for testing.
2. The use of the qualification-analysis method for active parts or energized components of special-certification components that are active mechanical and electrical equipment is NOT permitted.
3. When the qualification-analysis method is used, any/ all assumptions must be documented and justified.

E. Qualification by testing supported by analysis:

1. This method shall be considered only when it is known/ suspected that qualification solely by testing, or solely by analysis, is inadequate.
2. The use of qualification testing supported by analysis is appropriate when at least one of the following conditions apply:
 - a. The component is too large to be qualified by solely by shake-table testing, thereby requiring a subsystem approach.
 - b. Subsystems of large, complex components can be qualified by testing individually, and the overall structural frame of the component can be evaluated by analysis.

F. Qualification by analysis supported by testing:

1. This method should be considered only when it is known/ suspected that qualification solely by testing, or solely by analysis, is inadequate.
2. The use of qualification analysis supported by testing is appropriate when at least one of the following conditions apply:
 - a. The component is a system comprised of components for which qualification by analysis is appropriate, and of "subcomponents" for which qualification by analysis is inappropriate.
 - b. Systems with components that contain hazardous materials (e.g., tanks, piping, vessels, etc.) can be qualified by analysis, and operational valving or other active equipment can be evaluated by testing.

3. Supporting tests may be used as follows:
 - a. To determine the deflection limits within which functionality/ operability is maintained (if not provided by the equipment manufacturer).
 - b. To determine the dynamic parameters needed for constructing or verifying mathematical models.
 - c. To determine the assumptions to be used in the analysis.
 - d. To determine the amount of nonlinear response involved.

3.2 QUALIFICATION BY TESTING

- A. Qualification testing of all components shall be per ASCE 7 paragraph 13.2.5 and the following:
 1. Shake-table testing shall be done per ICC-ES AC156.
 2. Shake-table testing is mandatory for active parts or energized subcomponents of the following components:
 - a. Special-certification components that are active mechanical or electrical equipment.
 - b. Special-certification components with hazardous substances
 - c. If the component being qualified is connected to other components (in service), the qualification shall provide the permissible forces (e.g., nozzle loads, etc.) and as applicable, anticipated displacements of the component at the connection points to facilitate assessment for consequential damage, in accordance with ASCE 7 paragraph 13.2.3.
 3. Verify shake table tests by an IAS accredited and qualified Inspection Agency or other independent inspection entity acceptable to the Authority Having Jurisdiction (AHJ) and Engineer.
 4. Label components with an identification applied on the product by manufacturer that contains manufacturer's name, function and performance characteristics of the product or material, and name and identification of accredited Inspection Agency. Indicate that representative sample of the product or material and its testing have been evaluated and listed by accredited Inspection Agency.
- B. Components meeting the shake table and/or seismic testing requirements of the following (and seismic requirements specified herein) are considered to meet the Special Seismic Certification requirements for the project:
 1. ANSI/AHRI Standard 1270
 2. IEEE Standard 344
 3. IEEE Standard 693
 4. ASME QME-1

3.3 QUAIFICATION BY EXPERIENCE

- A. Review the inclusion rules and caveats corresponding to the equipment class in the experience-based qualification database against the candidate component and establish the validity of application of the qualification by experience.
- B. Demonstrate by seismic analysis that the component's seismic capacity exceeds the seismic demand corresponding to the design seismic event per the seismic criteria in the SGMDR and specified herein, using one of the following approaches outlined in EPRI (2007):
 - 1. Simplified Method: Seismic equipment demand, calculated using the attachment height to building height ratio, is compared against a threshold spectral acceleration value of 1.2; this approach does not consider the natural frequency of the equipment.
 - 2. SQUG Method A: In this method, the design ground motion response spectrum is compared against the SQUG bounding spectrum for the seismic evaluation.
 - 3. SQUG Method B: In this method, the realistic median-centered in-structure response spectrum calculated for the design earthquake is compared with the SQUG Reference Spectrum.
- C. Evaluate any potentially significant seismic systems interaction concerns that may adversely affect component safe shutdown function and address such concerns.

3.4 QUALIFICATION BY ANALYSIS

- A. Include an evaluation of stress and deformation developed through the entire load path from the center of applied seismic load to equipment anchorage. Perform analysis considering dynamic characteristics and response spectrum required by this specification.
 - 1. Piping System and Ductwork: For distribution systems such as piping and ductwork, include a stress analysis of the pipe and duct, supports, bracing, and anchors. Include gravity and seismic demand stress analysis, an analytical assessment of connections, and consideration for movement of attachment points. In the analysis, consider the effects of in-line devices, where present.
 - a. Fire Protection Piping: Conformances with NFPA 13 will satisfy requirements for Special Seismic Certification.
- B. Qualification analysis of special-certification components shall be of adequate rigor such that the seismic performance requirement (e.g., containment of contents following the design earthquake per the seismic criteria) is demonstrated/proven and shall include the demands stipulated in ASCE 7 Chapter 13.
- C. The mathematical model used in qualification analyses shall include the "in-service" connectivity (to other components), support and attachment as applicable, and nonlinear models shall be used for all elements not responding linearly to the design seismic event.

- D. Capacity.
1. Limiting strength(s) used in the analysis shall be per the OSSC and the standards referenced therein.
 2. Limiting deflection(s)/ displacement(s) used in the analysis shall be those maximum deflections that will not preclude the component from meeting its seismic performance requirement.
 - a. Use of deflection/ displacement limits either provided by the component manufacturer or determined from supporting tests is acceptable.
- E. Acceptability is based on the applicable demands (e.g., resultant stresses, deflections, etc.) not exceeding the associated capacities.
1. Any deviation from this requirement shall be justified in terms of the component achieving its seismic performance requirement.
- F. If the component being qualified will be connected to other components, the qualification shall provide the permissible forces (e.g., nozzle loads, etc.) and, as applicable, anticipated displacements of the component at the connection points to facilitate assessment for consequential damage, in accordance with ASCE 7 paragraph 13.2.3.
- G. Components meeting the shake table and/or seismic testing requirements of the following and seismic requirements are considered to meet the Special Seismic Certification requirements for the project:
1. ANSI/AHRI Standard 1270
 2. IEEE Standard 344
 3. IEEE Standard 693
 4. ASME QME-1

3.5 SUPPORTING ANALYSIS (FOR USE WITH QUALIFICATION BY TESTING)

- A. Supporting analysis/ analytical calculations may be used to develop data for use in qualification testing.
- B. The results of qualification testing may be used in supporting analysis/analytical calculations to complete the qualification of the component.
- C. Supporting analysis/ analytical calculations shall comply with all portions of the aforementioned Section "QUALIFICATION BY ANALYSIS", as applicable.

3.6 SUPPORTING TESTS (FOR USE WITH QUALIFICATION BY ANALYSIS)

- A. Supporting tests may be either static or dynamic in nature; however, static tests are not applicable to the active parts, or the energized subcomponents, of active components.

- B. Static supporting tests are conducted by applying static forces on the equipment. Typical data obtained from these tests are as follows:
 - 1. Static deflections and flexibility parameters are needed for constructing a mathematical model.
 - 2. Distortion in the equipment casing, due to nozzle loads, and the deformation limits within which the equipment would maintain its operability/ functionality.
- C. Dynamic supporting tests shall be conducted using a shake table. Typical data obtained from dynamic supporting tests are as follows:
 - 1. Dynamic characteristics of the equipment (natural frequencies, mode shapes and damping factors).
 - 2. Cross-coupling effects, i.e., the response in any direction due to the excitation in any other direction (in situations where installing accelerometers in some locations is impractical, cross-coupling may be estimated based on the response of the available accelerometer locations).
 - 3. The significance of the response of the equipment to vibratory motion to determine the necessity of combining equipment nozzle loads with other dynamic loads.

3.7 LOADS ON SUPPORTING STRUCTURE

- A. All loads transmitted by the component to the supporting structure shall be provided. The following loads, as applicable, shall be reported individually, and included in the determination of the transmitted loads:
 - 1. Dead load/ operating weight.
 - 2. Operational/ service loads.
 - 3. Nozzle loads.
 - 4. Pressure and thermal loads.
 - 5. Additional loads due to seismic excitations.
 - 6. Any other loads that are required to be transmitted to the structure/ foundation.

3.8 COORDINATION

- A. Do not fabricate or install restraints or non-building structures until submittals have been approved.
- B. Verify that multiple systems installed in the same vicinity can be installed without conflict.
- C. Verify tolerances between installed items to confirm that unbraced components will not come into contact with restrained equipment or structural members during an earthquake. When contact is possible, provide seismic restraint or provide justification to Owner's satisfaction that contact will not cause unacceptable damage to the components in contact, their supports, finishes or other elements that are contacted.

3.9 DESIGN AND GENERAL CONSTRUCTION

- A. Attach or anchor components and their supports, non-building structures, and Designated Seismic Systems to the structure. Provide a continuous load path of sufficient strength and stiffness between the component and the supporting structure.
- B. Design equipment support and bracing to resist seismic design force in any direction.
- C. Provide supports, braces, connections, hardware, and anchoring devices to withstand code-required forces and deformations without shifting or overturning.
- D. For components with $I_p = 1.5$, in addition to providing for code-required forces and deformations, construct installations capable of providing post-earthquake functionality.
- E. Bolt, weld, or otherwise positively fasten component attachments in accordance with ASCE 7 Chapter 13 without consideration of frictional resistance produced by the effects of gravity.
- F. Where equipment is mounted on vibration isolators and restraints, use isolators and restraints designed for amplified code forces per ASCE 7 and with demonstrated ability to resist required forces including gravity, operational, and seismic forces.
- G. As an alternate to project-specific design of bracing, use of proprietary restraint systems with a Certificate of Compliance verified and listed by an accredited Inspection Agency is acceptable. Use of a certified product does not preclude the requirement for Shop Drawings.
- H. Design piping, piping risers, ducts, and duct risers to accommodate inter-story drift.
- I. Provide flexible connections:
 - 1. Between floor-mounted equipment and suspended piping.
 - 2. Between unbraced piping and restrained suspended items.
 - 3. As required for thermal movement.
 - 4. At building separations and seismic joints.
 - 5. Wherever relative differential movements could damage piping in an earthquake.
- J. Where piping is explicitly exempt from seismic bracing requirements, provide flexible connections between piping and connected equipment, including in-line devices such as VAV boxes and reheat coils.
- K. Where piping is explicitly exempt from seismic bracing requirements, install piping such that swinging of the pipes will not cause damaging impact with adjacent components, finishes or structural framing. This will be considered satisfied if there is horizontal clear distance of at least $4/3$ the hanger length between subject components. If swinging of exempted piping can cause damaging contact with adjacent components, finishes or structural framing, add swing restraints as required to eliminate contact.
- L. Ductwork:
 - 1. Provide independent support for in-line devices weighing more than 20 pounds.
 - 2. Provide independent support and bracing for in-line devices weighing more than 75 pounds.

- M. Provide unbraced piping attached to braced in-line equipment with adequate flexibility to accommodate differential displacements.
- N. Tanks:
1. Design tank to resist design forces.
 2. Design tank anchorage to resist design forces.
 3. Design tank legs or supporting structure to resist design forces.
 4. Provide flexible connections between tank and interconnected piping.
- O. Fire suppression equipment and piping:
1. See requirements for piping.
 2. See requirements for equipment.
 3. Satisfy requirements of NFPA 13 and the force and displacement requirements of ASCE 7. All components shall be UL listed.
 4. Provide end of line restraint as required by NFPA 13.
- P. Conduit, cable tray, bus duct, raceways, bundled cabling:
1. Where conduit tray or bus duct or raceway or bundled cabling, is explicitly exempt from seismic bracing requirements, install these such that swinging of the component(s) will not cause damaging impact with adjacent components, finishes or structural framing. This will be considered satisfied if there is horizontal clear distance of at least $4/3$ the hanger length between subject components. If swinging of exempted components can cause damaging contact with adjacent components, finishes or structural framing, add swing restraints as required to eliminate contact.
 2. Provide gravity support for conduit/cable tray/bus duct/raceway/bundled cabling that is independent of suspended ceiling framing.
 3. Provide bracing of conduit/cable tray/bus duct/raceway/bundled cabling to resist gravity and design forces.
 4. Design conduit/cable tray/bus duct/raceway/bundled cabling to accommodate interstory drift.
- Q. As an alternate to project-specific design of bracing, use of proprietary restraint systems with a Certificate of Compliance verified and listed by an accredited Inspection Agency is acceptable. Use of a certified product does not preclude the requirement for Shop Drawings.
1. Provide flexible connections wherever relative differential movement could damage conduit/cable tray/bus duct/raceway/bundled cabling in an earthquake.

END OF SECTION

SECTION 26 05 88 - PREMIUM EFFICIENCY VERTICAL MOTORS

PART 1 GENERAL

1.1 DESCRIPTION OF WORK

- A. Work consists of all motors and control shown on the drawings and specified herein and in other divisions of the specifications. In general, all motors shall be premium efficiency and furnished with the driven equipment. The requirements of all other sections of the specifications are equally applicable to the work to be performed under this section. Motors and controls are specified in this and other divisions of the specifications. In the event of conflicts, the more restrictive specifications shall apply.
- B. Motor rating and performance shall match that of pump. Pumping Unit Supplier shall be responsible to ensure pump and motor performance as a complete unit, under all operating conditions, defined for this project.

1.2 SUBMITTALS

Complete motor data shall be submitted and include the following data:

- A. Motor manufacturer.
- B. Motor type or model and dimension drawing to include motor weight.
- C. Nominal Horsepower.
- D. NEMA Design.
- E. Enclosure.
- F. Frame size.
- G. Winding insulation class and treatment.
- H. Bearing and insulation
- I. Rated ambient temperature.
- J. Service factor.
- K. Voltage, phase, and frequency ratings.
- L. Full load current at rated horsepower for application voltage.
- M. Starting code letter, or locked KVA, or current.
- N. Special winding configuration.
- O. Rated full load speed.
- P. Guaranteed minimum Power Factor at 100, 75 and 50 percent of full load.
- Q. Guaranteed minimum efficiencies at 100, 75 and 50 percent of full load.
- R. Starting torque.
- S. Full load torque.
- T. Breakdown torque.
- U. Rated temperature rise at rated horsepower.
- V. Full load current at rated voltage.
- W. Current at no load on shaft at rated voltage.
- X. Connection diagram.
- Y. RTD—Resistance Temperature Detector: 100-ohm Platinum.
- Z. Superimposed load speed torque curve over motor speed torque curve
- AA. Recommended spare parts list priced.

1.3 FACTORY TESTING

Motors rated 100 HP and larger shall be factory tested in conformance with ANSI/IEEE 112, IEEE 43, and NEMA MG-2. Tests shall include full load heat run, performance, bearing (temperature, noise), locked rotor, speed torque, no-load saturation, surge, megohmmeter testing, and dielectric absorption ratio. Test report shall indicate test procedure and instrumentation used to measure and record data. Test report shall be certified by the Motor Manufacturer's test personnel and submitted to and approved by Owner's Representative prior to shipment of equipment.

1.4 GUARANTY PERIOD

Warranty requirements for pump motors shall be as specified in 43 21 27 Vertical Turbine pumps, Open Lineshaft.

PART 2 PRODUCTS

2.1 SERVICE CONDITIONS

- A. All equipment shall be designed and built for industrial service and be capable of operating successfully under the following applicable conditions.
1. 40 degrees C maximum ambient temperature.
 2. Voltage variations to $\pm 10\%$ of nameplate rating.
 3. Frequency variations to $\pm 5\%$ of nameplate rating.
 4. Combined voltage and frequency variations to $\pm 10\%$ total, as long as frequency does not exceed $\pm 5\%$.
 5. 3,300-foot maximum altitude.

2.2 ELECTRIC MOTORS

- A. General: Electric motors shall be premium efficiency, solid shaft electric motors, design B, high thrust, squirrel cage, induction type having NEMA weather protected type I enclosures unless otherwise specified. Motors shall utilize adjustable spacer couplings. Motors shall be suitable electrically and mechanically to efficiently and effectively drive pumps. Motors shall operate in accordance with these specifications.
- B. Unless specified otherwise, all materials, workmanship and tests shall conform with the applicable specifications to NEMA, IEEE, ASA and AFBMA.
- C. Motor frame shall be steel or cast iron, aluminum shall not be permitted. Motors shall be rated for operation at 460 VAC, 3 phase, 60 hertz, Service factor of 1.15 or greater. Motors shall operate at standard RPM's as required by the pump or equipment which they drive.
- D. Motors shall be rated for premium efficiency. Rated efficiencies shall be based on NEMA standards MG1-12.536 or standards imposed by the local electric utility, whichever is more restrictive.

- E. Motors shall be capable of full load operation with voltage variations of ± 10 percent and frequency variation of ± 5 percent.
- F. Motor starting current shall not exceed 650 percent of motor full load current.
- G. Insulation system: All motors shall be provided with Class "H" or better insulation systems except that motor lead insulation may be class "B" or better. Completed windings, when tested in accordance with IEEE #57 shall show a thermal rating not less than 150 degrees for 30,000 hours of life.
- H. Noise Level: Sound pressure levels shall be measured according to IEEE 85 and shall not exceed 85 decibels as measured on the A-weighted Scale at a distance of five feet from any motor surface under no load, free field conditions.
- I. Windings shall be held firmly in stator slots to prevent coil shift. Stator windings shall be of high conductivity copper magnet wire. Completed stator windings shall be provided with a properly cured, uniform impregnation for mechanical rigidity, moisture resistance, and protection against winding failure from accumulation of foreign conductive matter. The completed insulation system shall be capable of withstanding phase to ground rms voltage of 600 volts continuous and 2,300 volts instantaneous.
- J. All motors used with variable frequency drives shall be inverter duty rated and shall have a minimum of 1,600-volt rated insulation on the windings.
- K. Rated temperature rise above 40 degrees C ambient temperature, at service factor load of 1.15 shall not exceed 90 degrees C.
- L. Motors rated 50 HP and larger shall be rated NEMA locked rotor Code G or better.
- M. Motors shall be dynamically balanced to a maximum of .001 inches peak to peak amplitude.
- N. Motors shall be equipped with anti-friction type thrust and guide bearings. Angular contact thrust bearings shall be used. Bearings shall be of sufficient capacity to withstand all static and dynamic thrust loads, both momentary and continuous, imposed by the pump. Bearings shall provide minimum L-10 life of 60,000 hours based on continuous design thrust loads.
- O. Motor thrust bearings shall include an insulated thrust bearing carrier and motor shaft grounding ring.
- P. Motor thrust bearings shall be oil lubricated. Oil lubrication systems shall provide optimum lubrication of bearings. Oil lubricated motors shall have visual level indicators and accessible fill and drain plugs.
- Q. Motors shall be equipped with non-reverse mechanisms which shall limit maximum reversal to 10 degrees of rotation.
- R. Motors shall be equipped with fabricated steel terminal boxes. The motor terminal box shall be one size larger than the Manufacturer's recommendation. Separate accessory terminal boxes shall be provided for space heater and temperature sensors.

- S. Motor Nameplates shall include Manufacturer name, serial number, rated horsepower, service factor, frequency, phase, load voltage, full load amps, full load speed, design designation, locked rotor current and or designation, insulation class, temperature rise, maximum ambient temperature, NEMA efficiency, and full load power factor, time rating, model number, bearing identification, frame size, thermal protection, nominal and guaranteed efficiency.
- T. Motors shall be as manufactured by General Electric Company or US Motors.

2.3 ACCESSORIES

- A. Motors shall be equipped with two 100-ohm platinum winding RTDs per phase. Upper and lower bearing case shall be equipped with 100-ohm platinum RTDs. RTD wiring shall be brought out to a separate auxiliary terminal box. All RTDs shall be three wire configuration and suitable for input to the motor monitoring equipment.

PART 3 EXECUTION

3.1 MOTOR JUNCTION BOX

Provide motor junction box of sufficient size to accommodate the necessary incoming phase conductor conduit size and quantity shown on the drawings. Motor junction boxes shall be large enough to provide minimum NEC conductor bend radius. Coordinate and verify the size and location of the motor pull box to avoid conflict with equipment and maintenance activities.

END OF SECTION

SECTION 43 21 00 - LIQUID PUMPS GENERAL**1.1 SUMMARY**

- A. The provisions of this Section shall apply to all pumps and pumping equipment except where otherwise indicated.
- B. Where two or more pump systems of the same type or size are required, all pumps shall all be produced by the same Manufacturer.
- C. Provide all labor, equipment and materials and perform all operations in connection with the supply and testing of pumps selected by the Owner.
- D. Coordinate and utilize all factory testing, installation, start-up, and field-testing services supplied in conjunction with the pumping equipment.
- E. All work performed under this Section shall be in accordance with all approved trade practices and Manufacturer's recommendations.
- F. Section includes:
 - 1. General pump material, components and appurtenances for liquid pumps.
 - 2. Quality control factory and field testing.
- G. Related Sections:
 - 1. Section 43 21 27, Vertical Turbine Pumps, Can Type, Open Lineshaft

1.2 REFERENCE STANDARDS

- A. American Society of Mechanical Engineers (ASME):
 - 1. ASME B1.20.1 - Pipe Threads, General Purpose (Inch).
 - 2. ASME B16.1 - Gray Iron Pipe Flanges and Flanged Fittings: Classes 25, 125, and 250.
 - 3. ASME B16.5 - Pipe Flanges and Flanged Fittings: NPS 1/2 through NPS 24 Metric/Inch Standard.
- B. NSF International:
 - 1. NSF 61 - Drinking Water System Components - Health Effects.
 - 2. NSF 372 - Drinking Water System Components - Lead Content.
 - 3. NSF 600 - Health Effects Evaluation and Criteria for Chemicals in Drinking Water.
- C. Occupational Safety and Health Administration (OSHA):
 - 1. 29 CFR 1910 - Occupational Safety and Health Standards.

1.3 SUBMITTALS

- A. Submit in accordance with Section 01 33 00, Submittal Procedures: Requirements for submittals.

- B. Shop Drawings: Provide the following information:
1. Pump name, identification number, and applicable Section number from Project specifications.
 2. Performance Data Curves:
 - a. Provide performance curve showing head, capacity, horsepower demand, net positive suction head (NPSH) required and pump efficiency over the entire operating range of the pump.
 - b. Pump Manufacturer shall indicate separately the head, capacity, horsepower demand, overall efficiency, and minimum submergence required at the design flow conditions and the maximum and minimum flow conditions.
 3. The limits on the performance curves recommended for stable operation without surge, cavitation, or excessive vibration, known as the Acceptable Operating Range (AOR), per the Hydraulic Institute.
 4. Assembly and Installation Drawings: Including shaft size, seal, coupling, bearings, anchor bolt plan, part nomenclature, material list, outline dimensions, and shipping weights.
- C. Provide calculations for vertical turbine pumps as a designated seismic system and provide Special Seismic Certification as specified in 13 05 41-Design Load and Restraint Requirements for Non-Structural Components and Systems.
- D. All pump motor information as required in Division 26, including complete motor nameplate data as defined by NEMA, motor manufacturer and any motor modifications.
- E. Head structural analysis as specified herein and where required by individual pump sections.
- F. Provide lateral and torsional analysis as specified herein and where required by individual pump specifications.
- G. Operation and Maintenance Manual: Containing the required information for each pump section.
- H. Spare Parts List: Containing the required information for each pump section.
- I. Factory Test Data: Signed, dated, and certified for each pump system which requires factory testing submitted before shipment of equipment. Requirements for factory test data are specified below.
- J. Certifications:
 1. Manufacturer's certification of proper installation.
 2. Supplier's certification of satisfactory field testing.
- K. All pump motor information as required in Division 26.
- L. Certificate of Compliance:

1. Submit certificate of compliance indicating Work performed at fabricator's facility conforms to Contract Documents.

1.4 QUALITY ASSURANCE

- A. Materials in Contact with Potable Water: Certified to NSF Standards 61 and 372.

1.5 QUALIFICATIONS

- A. Manufacturer: Company specializing in manufacturing products specified in this Section with minimum five years' documented experience.
- B. The pumps shall be supplied by a distributor authorized to service them throughout the warranty period and beyond. The distributor shall be located within a 100-mile radius of the site.
- C. Pump supplier shall have at least 5 municipal vertical turbine pump installations of pumps larger than 150 horsepower within the last 10 years and located within 200 miles of the project site.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Inspection: Accept materials on Site in Manufacturer's original packaging and inspect for damage.
- B. Store materials according to Manufacturer instructions.
- C. Protection:
 1. Protect materials from moisture and dust by storing in clean, dry location remote from construction operations areas.
 2. Provide additional protection according to Manufacturer instructions.

1.7 WARRANTY

- A. Furnish 36-month Manufacturer's warranty for pumping systems.

PART 2 PRODUCTS

2.1 GENERAL

- A. All materials and equipment shall be new and unused except for the testing specified herein.
- B. Compliance with the requirements of the individual pump sections may necessitate modifications to the Manufacturer's standard equipment.
- C. All centrifugal pumps shall have a continuously rising performance curve. In no case shall the required horsepower at any point on the performance curve exceed the rated horsepower of the motor or engine or encroach on the service factor.

- D. All components of each pump system provided under the pump sections shall be entirely compatible. Each unit of pumping equipment shall incorporate all basic mechanisms, couplings, electric motors or engine drives, variable speed controls, necessary mountings, and appurtenances.
- E. The pumping units shall all be supplied by one vendor (unit responsibility) and shall be complete including pumps, motors, column assemblies, suction cans, baseplates, couplings, guards, and other accessories.
- F. The complete pump assembly shall be designed and built for continuous service at any and all points within the specified range of operation, without overheating, without damaging cavitation, and without excessive vibration or noise.

2.2 MATERIALS

- A. All materials shall be suitable for the intended application; materials not specified shall be high-grade, standard commercial quality, free from all defects and imperfection that might affect the serviceability of the product for the purpose for which it is intended, and shall conform to the following requirements:
 - 1. Cast iron pump casings and bowls shall be of close-grained gray cast iron, conforming to ASTM A 48 - Gray Iron Casings, Class 30, or equal.
 - 2. Stainless steel pump shafts shall be Type 416 or 316.
 - 3. Miscellaneous stainless steel shall be of Type 316, except in a septic environment.
 - 4. Anchor bolts, washers, and nuts supplied by the Supplier for non-corrosive applications shall be ASTM A307, Grade 2 (60 ksi), hot-dip galvanized.

2.3 PUMP COMPONENTS, GENERAL

- A. Flanges: Suction and discharge flanges shall conform to ANSI/ASME B16.1 - Cast Iron Pipe Flanges and Flanged Fittings, Class 12, 125, 250, and 800 or B16.5 - Flanges and Flanged Fittings dimensions.
- B. Handholes: Handholes on pump casings shall be shaped to follow the contours of the casing to avoid any obstructions in the water passage.

2.4 PUMP APPURTENANCES

- A. Nameplates: Each pump shall be equipped with a stainless steel nameplate indicating serial numbers, rated head and flow, impeller size, pump speed, and Manufacturer's name and model number.
- B. Gauges: Provide and install pressure gauges as shown on the Drawings.
 - 1. All pumps (except sample pumps, sump pumps, hot water circulating pumps, and chemical metering pumps) shall be equipped with pressure gauges on the pump discharge.
 - 2. Gauges shall be located in a representative location, where not subject to shock or vibrations, in order to achieve true and accurate readings.

3. Isolation diaphragms shall be provided for all gauges except where pumping potable water.
4. Where subject to shock or vibrations, the gauges shall be wall-mounted or attached to galvanized channel floor stands and connected by means of flexible connectors.

2.5 SHAFT COUPLING GUARDS

- A. Comply with OSHA requirements.

2.6 FINISHES

- A. As required in the individual pump specifications.

2.7 SOURCE QUALITY CONTROL

- A. Factory Testing:

1. Pump Systems: All centrifugal pump systems 100 horsepower (hp) and larger, and as specified in individual pump specification sections, shall be tested at the pump factory in accordance with the American National Standard for Rotodynamic Pumps for Hydraulic Performance Acceptance Test (ANSI/HI 14.6) and published by the Hydraulic Institute.
2. For motors smaller than 100 hp, the Manufacturer's certified test motor shall be acceptable. For motors larger than 100 hp, tests shall be performed using the complete pump system to be furnished, including the motor. The following minimum test data shall be submitted:
 - a. Hydrostatic test data.
 - b. A minimum of five hydraulic test readings between shutoff head and 25 percent beyond the maximum indicated capacity, recorded on data sheets as defined by the Hydraulic Institute.
 - c. Pump test data curves showing head, flowrate, bhp, and efficiency. Acceptance level shall be Grade 1U as defined by ANSI/HI 14.6.
 - d. Certification that the pump horsepower demand did not exceed the rated motor hp beyond the 1.0 service rating at any point on the curve.
 - e. Mechanical test data per ANSI/HI 14.6 Appendix E, including testing for vibration, lack of leakage at shaft seals, gaskets and other lubricated areas, and satisfactory operation of rotating parts at the rated pump operating conditions.
 - f. Vibration test results meeting ANSI/HI 9.6.4 requirements.
3. Factory Witnessed Tests: Factory witnessed testing for this Project not required.
4. Acceptance: In the event of failure of any pump to meet any of the requirements, the Supplier and Pump Manufacturer shall make all necessary modifications, repairs, or replacements to conform to the requirements of the Contract Documents and the pump shall be retested at no additional cost to the Owner until found satisfactory.

- B. Lateral, Torsional and Structural Rotordynamic Analysis - Where specified in the individual pump sections, the Supplier with system responsibility shall perform a complete lateral, torsional and head structural analysis of each distinct pump-motor system to be provided on this Project. These analyses shall be performed in accordance with the Level 1, Level 2 or Level 3 analysis guidelines outlined in HI 9.6.8 for the entire pump system.
1. Lateral and Torsional Analysis:
 - a. This analysis shall identify the dry and wet lateral critical and the torsional critical speeds.
 - b. This analysis shall be performed prior to fabrication of the machinery and shall be submitted for review as part of the pump submittal.
 - c. The pump and motor manufacturers shall furnish detailed mass elastic data to the Engineer, to be used for an independent evaluation of the analysis completed and no active critical speed shall be allowed within 25 percent of the operating speed range. Any encroachment within that range shall be eliminated to the satisfaction of the Engineer.
 2. Head Structural Analysis:
 - a. This analysis shall be performed prior to fabrication of the machinery and shall be submitted for review as part of the pump submittal.
 - b. Perform a complete head lateral analysis of each distinct pump-motor system that analyzes the head and motor combination.
 - c. This analysis shall include a Finite Element Analysis (FEA) to determine the natural frequencies of the above grade head and motor assembly, assuming a rigid foundation. The analysis shall show that the natural frequencies do not encroach within plus or minus 25 percent of any normal operating speed.
- C. Do not ship equipment until test data have been accepted by Engineer.

PART 3 EXECUTION

3.1 SERVICES OF PUMP MANUFACTURER

- A. An authorized service representative of the Manufacturer shall visit the Site to witness the following and to certify in writing that the equipment have been properly installed, aligned, lubricated, adjusted, and readied for operation:
1. Installation of the equipment.
 2. Inspection, checking, and adjusting the equipment.
 3. Startup and field testing for proper operation.
 4. Performing field adjustments to ensure that the equipment installation and operation comply with requirements.

5. Requirements are more specifically detailed herein and in individual pump specifications.
- B. Instruction of the Owner's Personnel:
1. An authorized training representative of the Manufacturer shall visit the Site to instruct the Owner's personnel in the operation and maintenance of the equipment, including step-by-step troubleshooting with necessary test equipment.
 2. Instruction shall be specific to the models of equipment provided.
 3. The Pump Manufacturer's representative shall have at least 2 years' experience in training.
 4. Training shall be scheduled a minimum of 3 weeks in advance of the first session.
 5. Proposed training material and a detailed outline of each lesson shall be submitted for review. Comments shall be incorporated into the training materials.
 6. The training materials shall remain with the trainees.
 7. The Owner may digitally record the training for later use with the Owner's personnel.

3.2 INSTALLATION-BY OTHERS

- A. Pump cans supplied under this contract will be installed by the PWB Bull Run Filter Facility contractor. Pumps supplied under this contract will be installed by the Owner's Pump Installation Contractor.
- B. General: Pumping equipment shall be installed in accordance with the manufacturer's written recommendations.
- C. Alignment:
1. All equipment shall be field tested to verify proper alignment, operation as specified and freedom from binding, scraping, vibration, shaft runout or other defects.
 2. Pump drive shafts shall be measured just prior to assembly to ensure correct alignment without forcing.
 3. Equipment shall be secure in position and neat in appearance.
- D. Lubricants: Provide the necessary oil and grease for initial operation.

3.3 FIELD TESTS

- A. Engineer shall be notified of witness field testing and shall witness portions of the testing, as determined by the Engineer.
- B. Each pump system shall be field tested after installation to demonstrate satisfactory operation without excessive noise, vibration, cavitation, or overheating of bearings.

- C. Test for proper alignment and freedom from binding, scraping, shaft runout, or other defects.
- D. Field testing methods and allowable tolerances shall comply with current version of the Hydraulics Institute standards for the type of pumps installed.
- E. The following field testing shall be conducted:
 - 1. Startup, check, and operate the pump system over its entire speed range. Where vibration analysis and measurement are required, it shall be within the amplitude limits specified and recommended by the Hydraulic Institute Standards at a minimum of four pumping conditions defined by the Engineer.
 - 2. Obtain concurrent readings of motor voltage, amperage, pump suction head and pump discharge head for at least four pumping conditions at each pump rotational speed. Check each power lead to the motor for proper current balance.
 - 3. Electrical and instrumentation tests shall conform to the requirements of the Section under which that equipment is specified.
 - 4. Field vibration readings shall be conducted by an Owner approved certified pump vibration testing agency, paid for by the Pump Installation Contractor, with readings taken at the following positions with the average not exceeding the current Hydraulic Institutes standards for the type of pump installed.
 - a. Measurements shall be taken at the locations as specified in the current Hydraulic Institute standards for the type of pump installed. Provide written proof of vibration readings and provide test data.
 - b. Owner approved testing agencies: OTS Precision Balancing.
 - 5. Sound test not to exceed 85 dbA at 3 feet from motor in any direction.
- F. Field testing will be witnessed by the Engineer.
- G. Equipment Acceptance:
 - 1. Acceptance shall include a comparison of measured installed pump performance with the Manufacturer's curve values. Any discrepancy shall be resolved prior to acceptance by the Owner.
 - 2. Adjust, repair, modify, or replace components failing to perform as specified and rerun tests until the performance is verified.
 - 3. Make final adjustments to equipment under direction of Manufacturer's representative.
 - 4. After each pumping system has satisfied the requirements, the Pump Installation Contractor shall certify in writing that it has been satisfactorily tested and that all final adjustments have been made. Certification shall include the date of the field tests, a listing of all persons present during the tests, and the test data.

END OF SECTION

SECTION 43 21 27 - VERTICAL TURBINE PUMPS, CAN TYPE, OPEN LINESHAFT

PART 1 GENERAL

1.1 SUMMARY

- A. Work covered in this Section includes furnishing, installing, start-up and operation training for vertical turbine pumps of the can type with open lineshaft.
- B. Like items of equipment specified herein shall be the end product of one manufacturer.
- C. Electrical controls and motor design requirements are specified in this section and the electrical section of these specifications.
- D. The pump supplier shall be responsible for coordinating the pump requirements with the Pump Drive Manufacturer and shall be responsible for the overall pump and drive requirements.
- E. Pump shall be NSF certified as required by Section 43 21 00, Liquid Pumps.

1.2 SUBMITTALS

- A. Submittals shall be made in accordance with Section 01 33 00, Submittal Procedures
- B. Provide fully engineered pump submittal as specified in Section 43 21 00-1.5, Liquid Pumps.
- C. **Bid Package Pump and Pump Barrel (Can) Submittal:**
 - 1. Pump barrel shall be submitted as part of the Suppliers Bid Package for early approval and installation by the Installation Contractor. Pump dimensional and performance curve information shall also be provided, however the fully engineered pump submittal can follow after the Supplier has been awarded and Notice to Proceed issued. Pump and pump barrel submittal shall be provided by the pump supplier/manufacturer and shall include the following:
 - a. Pump barrel material information.
 - b. Pump barrel coating and lining information.
 - c. Shop drawings of pump barrel, pump discharge head and pump. Shop drawings shall include dimensions of the pump can that are coordinated with the pump dimensions.
 - d. Performance curve of pump selection to confirm that pump selection meets the performance criteria specified herein.
 - e. Pump barrel fabrication lead time.

1.3 REFERENCES

Pumps shall meet the requirements of the latest version of the Hydraulic Institute Standards, except where modified herein.

1.4 PUMP ANALYSIS AND VIBRATION TESTING

- A. Pump vendor shall provide head structural analysis per Section 43 21 00, Liquid Pumps.
- B. Pump vendor shall provide lateral rotor dynamic analysis and torsional natural frequency analysis per Section 43 21 00, Liquid Pumps.
- C. Pump vendor shall provide Special Seismic Certification per Section 43 21 00, Liquid Pumps and Section 13 05 41-Design Load and Restraint Requirements for Non-Structural Components and Systems.
- D. Pump vendor shall provide factory vibration testing per Section 43 21 00-2.7.A, Liquid Pumps.
- E. Field vibration measurements during field testing of each pump-motor unit shall be provided per Section 43 21 00, Liquid Pumps.
 - 1. The Pump Installation Contractor shall provide the services of a pump vibration specialist who shall be experienced in this type of work and who shall be approved by the Owner as specified in Section 43 21 00. This specialist shall visit the project site during startup and testing of the equipment to analyze and measure the amount of pump vibration and make a written recommendation for keeping the vibration within hydraulic institute parameters and at a safe limit.
 - 2. If vibration results exceed the specified limits as identified in Section 43 21 00, Pump Installation Contractor and Pump Supplier shall make corrections until the vibration limits are met. This could include balancing of the pumps, resurfacing of pump mounting flanges or base plate, or other approved corrective measures to meet the vibration limits.

PART 2 PRODUCTS

2.1 MANUFACTURERS

- A. Acceptable pump manufacturers shall be Floway, Flowserve, or equal.

2.2 DESCRIPTION

- A. Identification :

Location	Bull Run Supply Pump Station
Pump Label(s)	Pump No. 1, Pump No. 2
Quantity	2 Pumps (4 Pump Cans)

- B. Performance Requirements at Full Pump Speed:

Maximum Shutoff Head (ft)	540
Minimum Shutoff Head (ft)	500
Design Flow Capacity:	
Duty Point #1	1,770 gpm @ Between 358' TDH to 367' TDH
Duty Point #2	1,275 gpm @ 450' TDH

Minimum Bowl Efficiency:	
Duty Point #1	82%
Duty Point #2	N/A
Maximum Pump Speed (rpm)	1,800
Motor Size (hp)	250

C. Operating Conditions:

Duty	Continuous
Drive	Constant Speed
Ambient Environment	Indoor
Ambient Temperature	33° - 110° F
Fluid Service	Potable Water
Fluid Temperature	33° - 75° F
Fluid pH Range	6.0 to 8.5
Fluid Specific Gravity	1.0
Fluid Viscosity (absolute) (centipoises at 60° F)	1.12
Pump Station Floor Elevation	Refer to Plans
Maximum NPSHr at Duty Point #1	18 ft

D. Pump Dimensions:

Suction Diameter	16
Suction Flange Rating (AWWA)	Class D Flange (AWWA) or Class 150 Flange (ANSI B16.5)
Discharge Head Flange Diameter (in)	10
Discharge Head Flange Rating (AWWA)	Class E Flange (AWWA) or Class 150 Flange (ANSI B16.5)
Minimum Column Shaft Diameter (in)	Per Manufacturer
Minimum Pump Bowl Shaft Diameter (in)	Per Manufacturer
Minimum Column Diameter (in)	8
Suction Barrel Diameter (in)	20
Maximum Pump Bowl Assembly Diameter (in)	To fit inside suction can with clearances provided for installation and removal and provide less than 5 ft/s suction velocity between can and largest pump diameter (bowl or column flange), per HI requirements.
Minimum Setting (Distance from underside of discharge head or base plate to column pipe connection at bowl assembly)	As required based on maximum can length and pump bowl submergence, Per HI Requirements
Approximate Suction Barrel Length (in)	513-11/16 (see note 1 below table)

Pump Bowl Submergence requirements (in)	As required by pump manufacturer to meet HI requirements
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- 1) Suction barrel length indicated is from bottom (exterior) of pump can to the mating surface of the pump can mounting flange.

E. Other Requirements

1. The head-capacity curve shall exhibit a uniformly rising characteristic from free discharge to shutoff. The pump motor shall be non-overloading throughout the entire pump curve.
2. All flow capacity and head duty points shall be within the Preferred Operating Range (POR) of 70% to 120% of the Best Efficiency Point (BEP). Pumps shall only operate within the POR.

2.3 PUMP CONSTRUCTION

- A. Pump bowls shall be cast-iron, lined and coated with one of the following coating and lining systems:
1. Provided with a one part, heat curable, thermosetting epoxy coating designed for corrosion protection of metal. The epoxy shall be applied as a dry powder which melts and cures to the surface to create a uniform thickness. The lining and coating shall be NSF 61 600 approved Skotchkote 134, manufactured by 3M or equal.
 2. Provided with a high solids polyamine epoxy that is formulated for use for potable water applications and meets requirements of AWWA C210 and NSF 61/600. The lining and coating shall be Hydroplate 1086, manufactured by Carboline or equal.
- B. The impellers shall be ASTM B584 UNS C90300 bronze or Type 316 stainless steel and shall be statically and dynamically balanced. They shall be securely fastened to the shaft with tapered lock collets, threaded lock collets or double keys. The impellers shall be adjustable vertically by external means at the driver location.
- C. Replaceable impeller and pump bowl wear rings shall be provided. Impeller wear rings shall be either B148 alloy C952 or B271 alloy C954, and pump bowls wear rings shall be B271 alloy C954 for pumps with bronze impellers. For pumps with stainless steel impellers, Type 316 stainless steel wear rings shall be provided on the impellers with bronze for the pump bowls.
- D. The bowl shaft shall be stainless steel, Type 410, 416, or 316.
- E. The suction bell shall be cast-iron with a bottom bearing and streamlined ribs. Lining and coating shall be the same as the pump bowls.
- F. The column pipe shall be not less than Schedule 40 steel pipe. Pipe sections shall not exceed 10 feet in length. The column pipe shall be epoxy lined and coated with the same coating as the pump bowls.
- G. The line shaft and couplings shall be Type 416 stainless and sized such that the natural frequency of the shaft is avoided by a minimum 25 percent throughout the entire operating range. Line shaft sections shall not exceed 10 feet in length.

- H. Line shaft shall be product lubricated.
- I. The shaft seal shall be a mechanical type and meet the requirements of one of the following options:
 1. Cartridge seal utilizing a flexible stator design. Metal parts shall be 316 stainless steel and seal faces shall be sintered silicon carbide with fluoroelastomer gaskets. Springs shall be isolated from the process fluid and be designed to eliminate shaft fretting and stress corrosion. Seal shall include multiple coil springs for even face loading. Seal shall be supplied with a tangential flush port and carbon throttle bushing with quench and drain ports. Seal shall be designed to dissipate heat at the seal face. Set screws shall be type 17-4 H900 stainless steel to securely engage the shaft or pump sleeve. Mechanical seal shall be model ISC2-PX-61 manufactured by Flowserve , or approved equal.
 2. Cartridge seal shall be equipped with non-clogging, single coil springs and non-sliding, internal, secondary elastomers. Metal parts shall be Type 316 stainless steel, alloy 20, or Hastelloy B or C. Sealing materials shall be resin impregnated carbon for primary ring and silicon carbide for mating ring. O-ring material shall be fluoroelastomer. Seal shall be John Crane type 5610 or equal.
- J. The discharge head shall be fabricated steel. Fabricated steel discharge head shall be reinforced to withstand pipe thrust and the entire weight of the pump and driver. Discharge head shall be lined and coated with an NSF 61 coating system that matches the pump bowls and shall include flange and base plate. Forged steel half-couplings for air valve and drain connections shall be a minimum of 1 1/4-inch and 3000 lbs.
- K. The motor shaft coupling shall be a 4-piece, heavy-duty adjustable spacer coupling, to allow for mechanical seal removal, with machined registered fit per Pump Manufacturer and complying with ANSI/AWWA E-103 and ANSI/HI 2.1 through 2.5 specifications.
- L. The bottom bearing shall be a close tolerance sleeve type conforming to ANSI/AWWA E-103 and ANSI/HI 2.1 through 2.5 specifications with a length minimum of 2 1/2 times shaft diameter. Suction case shall be permanently grease lubricated with non-soluble grease.
- M. The bowl and suction case bearings shall be of the bronze sleeve type.

2.4 SUCTION BARREL FOR CAN TYPE PUMPS

- A. The suction barrels (cans) shall be supplied by the Pump Manufacturer or Supplier and shall be fabricated steel, 3/8-inch thick, lined with NSF 61 listed coating system that matches the pump bowls.
- B. Suction barrels shall come with an extra-heavy carbon steel mounting plate, drilled and tapped to match the discharge head. Provide pump can mounting plate with 1" threadolet for future connection of 1" piping and air release valve.
- C. Suction barrel shall come equipped with flow vanes, if required by HI and Pump Manufacturer requirements. If not required by HI or Pump Manufacturer then flow vanes are not required.
- D. Provide recommendation for touch up coating system for pump barrel for future Pump Station Installer that will be installing the pump onto the pump barrel mounting flange.

2.5 MOTORS

- A. Each pump shall be provided with a vertically mounted three-phase 480 Volt electric motor that conforms to the following requirements and the specifications in Division 26 20 00, Low Voltage AC Induction Motors.
- B. The brake horsepower required by the driven equipment anywhere on the pump curve shall not exceed the rated nameplate horsepower of the motor. The ratings indicated are minimums. Motors shall be designed to accept the total, unbalanced thrusts imposed by the pump.
- C. Pumps shall be provided with Resistance Temperature Detector (RTD's) as specified in Section 26 05 88-Premium Efficiency Vertical Motors.

2.6 PUMP CONTROLS

For controls see Specifications within Division 40.

2.7 SPARE PARTS:

- A. The pumps shall be provided with the following spare parts for each pump:
 1. One mechanical seal.

PART 3 EXECUTION

3.1 PUMP BARREL INSTALLATION-BY OTHERS

3.2 SERVICES OF MANUFACTURER

- A. Installation -- The service representative of the Manufacturer shall be continuously present at the site to supervise the assembly and installation of the pumps.
- B. Inspection, Startup and Field Adjustment -- The service representative of the Manufacturer shall be present at the site for not less than 4 workdays in addition to those days provided in the previous paragraph for pump installation.
- C. Instruction of Owner's Personnel -- The training representative of the Manufacturer shall be present at the site for 1 workday in addition to those days provided in the previous paragraphs, to furnish services required by Section 43 21 00, Liquid Pumps. Coordinate with Engineer and Owner.
- D. For the purposes of this paragraph, a workday is defined as an eight-hour period at the site, excluding travel time.
- E. The Engineer may require that the inspection, startup, and field adjustment services above be furnished in three separate trips.
- F. The Pump Supplier shall provide field vibration testing per Specification 43 21 00, Liquid Pumps.

END OF SECTION

**ADDENDUM NO. 1
TO THE REQUEST FOR PROPOSAL
DOCUMENTS FOR PROJECT NO. W23001**

CITY OF SANDY

BULL RUN SUPPLY PUMP STATION PUMP AND PUMP CAN PROCUREMENT

This addendum, issued on the **15th day of November 2024**, affects the request for proposal documents for the **BULL RUN SUPPLY PUMP STATION PUMP AND PUMP CAN PROCUREMENT Project No. W23001** and shall be deemed an integral part of the above referenced documents.

CLARIFICATIONS

Question:

Since there were no plans included in the bid package, confirm the configuration for the cans and answer the following questions.

1. We need to know the type of barrel adaption to header. Will it have a slip on flange on the bottom end (24"-150# FF or RF) flange? Will they be welding the pipe to the header directly? Also, I noticed they provided the centerline of head pipe, but it looks like there is an extension off the header pipe and we need to know the elevation of where that ends in order to design the length of the barrel appropriately.
2. Provided floor elevation, however I need to know where the discharge head centerline is, so that based on the type of discharge head plan to supply, we can determine the pedestal height where the mounting plate of the barrel would get anchored.

Response:

Added Drawings:

The following drawings are hereby attached for reference:

1. City of Sandy, Bull Run Supply Pump Station - Phase 1
D-301, Pump Can Sections (Phase 1 - D-301)
2. City of Sandy, Bull Run Supply Pump Station - Phase 2
D-301, Pump Station Sections (Phase 2 - D-301)

Answers:

1. The Pump Barrels (Cans) are attached to the main 20-inch suction header pipe via individual 16-inch pump suction pipes with flanged connections to each pump can. Per attached Drawing "Phase 1 - D-301", the centerline of the 16-inch inlet flange is to be at elevation 674.24', approximately 4'-2 3/8" above the bottom of the pump can. The bottom of the pump can may need to go deeper as determined/required by pump manufacturer to meet hydraulic institute requirements, based on the pump selection.

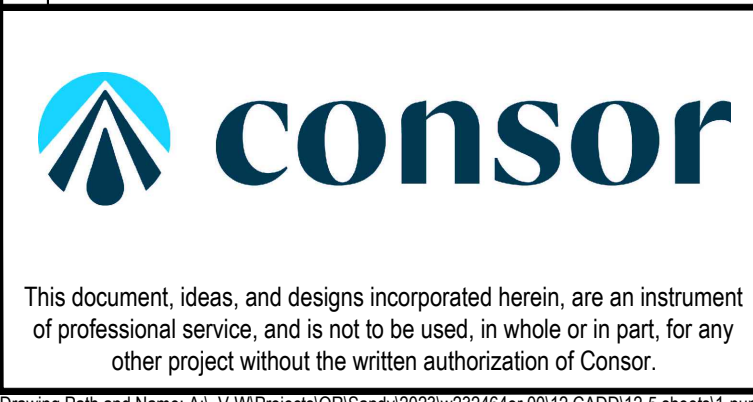
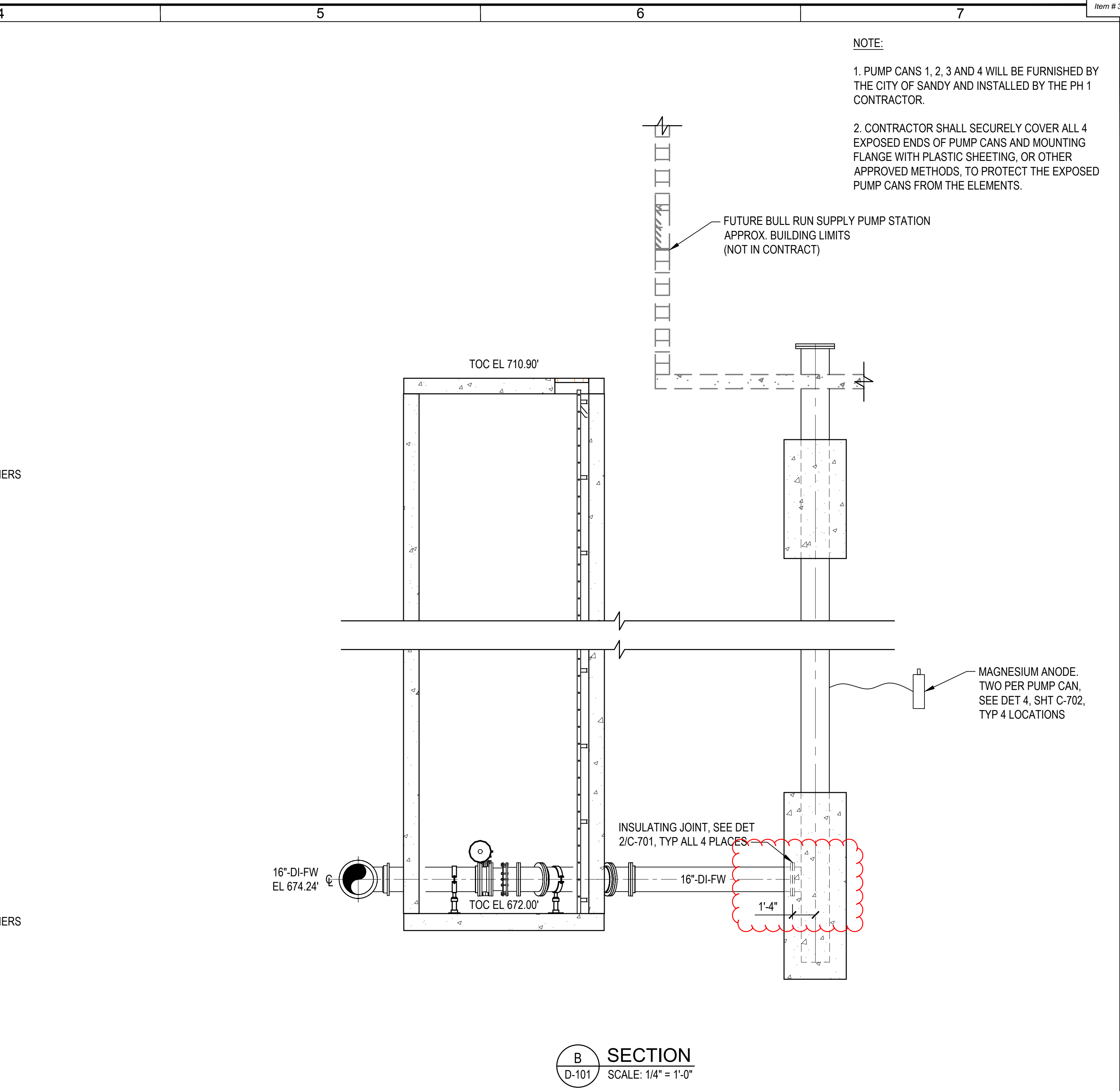
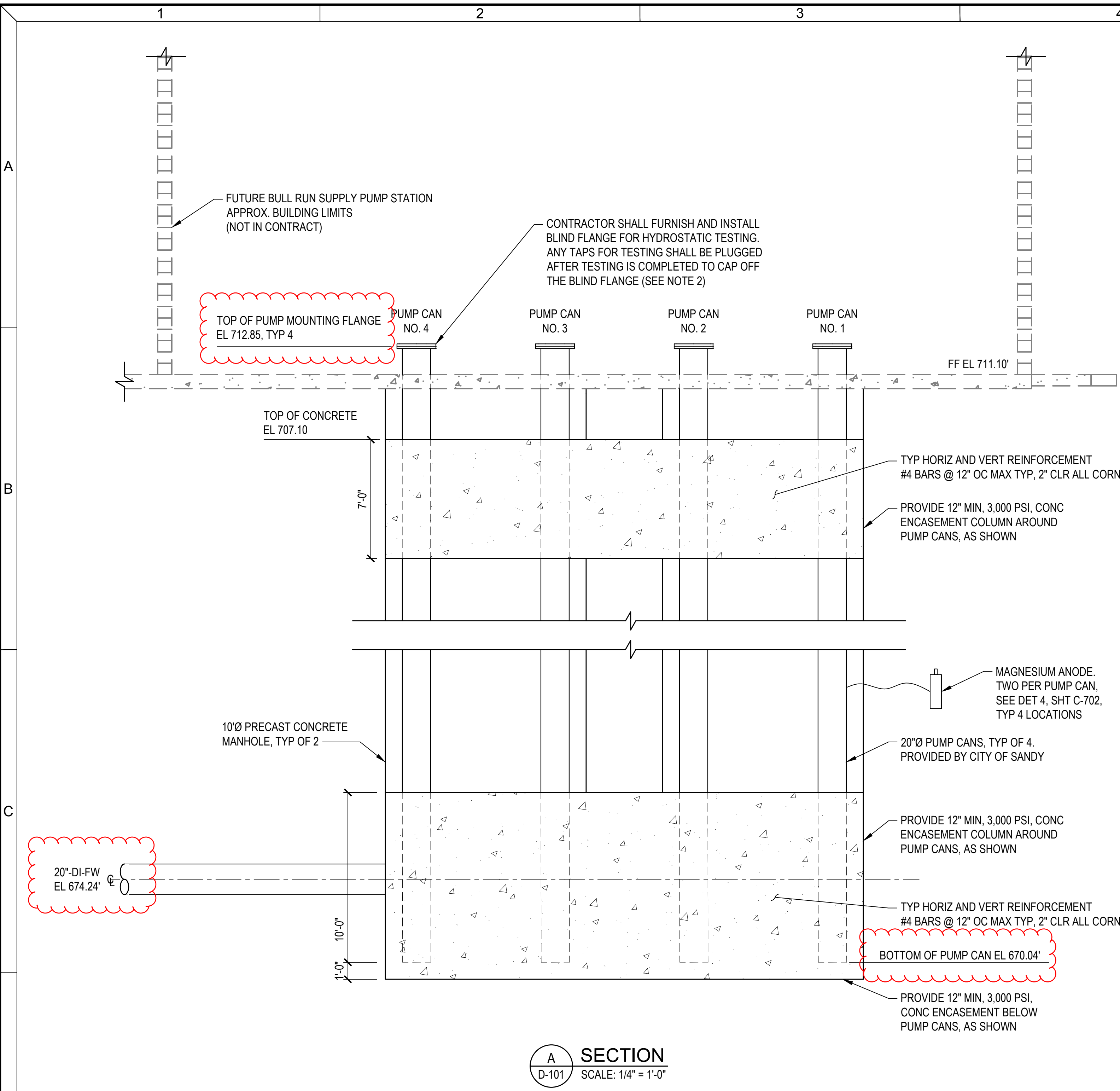
Per attached Drawing “Phase 1 - D-301”, the face of the inlet flange is shown extending 1’-4” from the centerline of the pump can, however pump supplier may recommend a different dimension based on their pump can design. Per Specification Section 43 21 27, Part 2.2 D., Pump Dimension Table Item, Suction flange Rating (AWWA), the flange is to be Class D Flange (AWWA or Class 150 Flange per ANSI B16.5). The face style shall be flat faced as the intended insulating gaskets for corrosion prevention are specified as full faced (Garlock Gylon 3505, or equal).

2. See specification Section 43 21 27, Part 2.2 D., Pump Dimension Table Item, Approximate Suction Barrel Length of 513-11/16 inches (42’-9 11/16”) corresponds to the elevations as listed on attached Drawing “Phase 1 - D-301” (note the bottom of the pump can is measured from the bottom exterior of the can):
 - TOP OF PUMP MOUNTING FLANGE EL 712.85’
 - BOTTOM OF PUMP CAN EL 670.04’

The intent of the design is to have the inlet flange oriented 180 degrees from the pump discharge. Per attached Drawing “Phase 2 - D-301”, the pump discharge centerline elevation is shown as 713.76’, approximately 0’-11” above the face of the top of the pump can mating flange. This dimension may change based on the pump manufacturer’s requirements.

NOTE:

- PUMP CANS 1, 2, 3 AND 4 WILL BE FURNISHED BY THE CITY OF SANDY AND INSTALLED BY THE PH 1 CONTRACTOR.
- CONTRACTOR SHALL SECURELY COVER ALL 4 EXPOSED ENDS OF PUMP CANS AND MOUNTING FLANGE WITH PLASTIC SHEETING, OR OTHER APPROVED METHODS, TO PROTECT THE EXPOSED PUMP CANS FROM THE ELEMENTS.



Consultant:

100% SUBMITTAL

Engineer's Seal:
PRELIMINARY NOT FOR CONSTRUCTION



Client / Owner:
CITY OF SANDY BULL RUN SUPPLY PUMP STATION - PHASE 1

Project Title:
PROCESS PUMP CAN SECTIONS

Designed By: BKH	Consort Project No.: W232464OR
Drawn By: JLC	Issued On: OCTOBER 2024
Checked By: AJC	Drawing No.: D-301
Approved By: EPK	0 1/2 1 IF BAR DOES NOT MEASURE 1" DRAWING IS NOT TO SCALE



STAFF REPORT

Meeting Type: City Council
Meeting Date: December 16, 2024
From: Jeff Aprati, Interim Public Works Director
Jenny Coker, Former Public Works Director
Subject: Contract Approval: Veolia Five-Year Extension; Operations, Maintenance, and Management Services for Drinking Water and Wastewater Treatment Plants

DECISION TO BE MADE:

Whether to authorize the City Manager to execute an Amended and Restated Agreement with Veolia Water North America – West, LLC (Veolia) for Operations, Maintenance and Management Services.

BACKGROUND / CONTEXT:

In 2018, the City of Sandy was asked to explore options for the operations of the drinking water and wastewater treatment plants. The City conducted a qualifications based selection in 2018. In the December 17, 2018 Council Meeting, the Council voted to issue a 90-day notice of intention to terminate the agreement with Jacobs, and to authorize the City Manager to sign a new contract with Veolia North America (attached).

The City of Sandy entered into a five-year agreement with Veolia for operations, maintenance, and management services for the drinking water and wastewater treatment plants on December 18, 2018, and Veolia assumed operations in March of 2019 for a duration of five years with the option to renew.

On February 20th, 2024 the City Council authorized a four-month extension of services until July 1, 2024 to allow for the City and Veolia to finalize details for a subsequent five year extension of services. Additional extensions occurred in June of 2024 and again in September 2024 as the City and Veolia’s legal teams negotiated various aspects of the contract, including prevailing wage. Given the number of recommended edits from both sides, both City and Veolia staff ultimately decided to amend and restate the contract, rather than executing a simple contract amendment. However, the amended and restated contract will still fulfill the originally intended scope and duration of both the 2018 request for proposals and original agreement.

KEY CONSIDERATIONS / ANALYSIS:

As was discussed in recent months before the Water & Wastewater System Improvements Oversight Committee, this amendment is necessary to continue to maintain a contract for operations services for the Drinking Water and Wastewater Treatment plants past December 31, 2024.

Veolia has been an important partner to the City in stabilizing and improving treatment and operations the last five years, as well as conducting stress testing of the system. This amendment updates the contract requirements for a new five-year term.

Operations of wastewater treatment plants especially continue to see staffing shortages, and a five-year renewal term is attractive for higher-level plant manager candidates that are looking for long term stability. The agreement also contains provision for termination, should the City so desire, giving flexibility to the City.

At the end of the next five years, the City will have completed upgrades to both the Wastewater and Water Treatment Plants, making it an appropriate time to conduct a new RFP process for contract operations services. Until that time, staff's opinion is that remaining with Veolia is in the City's interest given the firm's substantial involvement with the improvement projects currently in process.

Changes in the contract increase operations staffing numbers required to maintain adequate service coverage for both Water and Sewer Treatment Plants, increases labor pricing for certified operators to adjust for market conditions (and the recent losses of two employees to neighboring utilities), removes chemicals from the contract (with the exception of dewatering polymer), accounts for prevailing wage impacts, and include prorated increases for services of 6.72% that would have occurred at the former March renewal deadline. The new agreement changes the contract renewal date to January 1 every year instead of March 1, which is easier to accommodate for budgeting purposes.

BUDGET IMPACT:

The current agreement has an escalation calculation that occurs annually on the renewal date based on a formula in the agreement. This extension price agreement is in line with these calculations, and proposes and adjusted annual base fee of \$942,081 for Wastewater Services and \$223,615 for Water Services, and is included in the current budget.

RECOMMENDATION:

Authorize the City Manager to execute the Amended and Restated Agreement with Veolia for a five-year extension.

SUGGESTED MOTION LANGUAGE:

"I move to approve the Amended and Restated Agreement with Veolia Water North America-West, LLC, as included in the meeting packet."

LIST OF ATTACHMENTS / EXHIBITS:

- Amended and Restated Agreement 2024 (labeled with 'new' watermark)
- Original Veolia Agreement (labeled with 'existing' watermark)

AMENDED AND RESTATED AGREEMENT

for

OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
for the

CITY of SANDY, OREGON

NEW

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NEW

AMENDED AND RESTATED AGREEMENT FOR OPERATIONS, MAINTENANCE
AND MANAGEMENT SERVICES

THIS AMENDED AND RESTATED AGREEMENT (the “Agreement”) is made and entered into this 1st day of January 2025 (the “Effective Date”), by and between the City of Sandy, Oregon whose address for any formal notice is 39250 Pioneer Blvd, Sandy, OR 97055 (“Owner”) and Veolia Water North America-West, LLC (“VEOLIA”), whose address for any formal notice is 4160 Temescal Canyon Road, Suite 311, Corona, CA 92883 with a contemporaneous copy to: 53 State Street, 14th Floor, Boston MA 02109, Attn: General Counsel. Owner and VEOLIA are each referred to as a “Party” and are collectively referred to as the “Parties.”

STATEMENT OF PURPOSE

WHEREAS, the Owner owns certain facilities and systems which are further described in Appendix C;

WHEREAS, Owner desires to contract with VEOLIA to perform certain operation and maintenance services as further described in Appendix B under the terms and conditions set forth in this Agreement.

WHEREAS, the Owner and VEOLIA are parties to that certain Agreement for Operations, Maintenance and Management Services, dated as of December 19, 2018, as amended by Amendment No. 1 to Agreement for Operations, Maintenance and Management Services, effective as of March 1, 2024, Amendment No. 2 to Agreement for Operations, Maintenance and Management Services, effective as of July 1, 2024, and Amendment No. 3 to Agreement for Operations, Maintenance and Management Services, effective as of October 1, 2024 (collectively, the “Original Agreement”); and

WHEREAS, the Original Agreement contemplates and permits the parties to extend the Original Agreement for another five (5) years beyond the original five-year term; and

WHEREAS, Owner and VEOLIA temporarily extended the term of the Original Agreement in order to effectively negotiate this Agreement; and

WHEREAS, the Owner and VEOLIA wish to continue their working relationship in connection with the Project and amend and restate the Original Agreement with this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree to amend and restate the Original Agreement as follows:

1. SERVICES AND STANDARD OF PERFORMANCE

- 1.1. VEOLIA shall, within the design capacity and capability of the Owner’s facilities, perform the services set forth in Appendix B in accordance with applicable law and the requirements set forth in Appendix C.
- 1.2. VEOLIA shall perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services under the same conditions.

- 1.3. VEOLIA shall be responsible for the cost of operation, maintenance and fuel for Owner vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. Training for VEOLIA employees and other such activities are not part of the course and scope of this Agreement and therefore Owner vehicles and equipment should not be used for such matters.

2. OWNER'S RESPONSIBILITIES

- 2.1. Maintain and renew, with respect to all existing portions of the System, warranties, guarantees, easements, permits, authorizations and licenses that have been granted to the Owner, to the extent the maintenance thereof is not a responsibility of VEOLIA hereunder. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereinafter acquired by Owner shall remain the exclusive property of Owner unless specifically provided for otherwise in this Agreement.
- 2.2. Owner shall pay all amounts associated with the occupancy or operation of the Project and the performance of the obligations as listed in Appendix B including, but not limited to, all excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project. Taxes imposed upon VEOLIA's net income and/or payroll taxes for VEOLIA's employees are not included.
- 2.3. Owner shall provide all registrations, licenses and insurance (and shall be responsible for renewals for such registrations, licenses and insurances) for Owner's vehicles and heavy equipment used in connection with the Project.
- 2.4. Owner shall provide for VEOLIA's use of all vehicles and equipment currently in use at the Project, including the vehicles described in Appendix F. Such vehicles and equipment shall be in road safe condition. As stated above, VEOLIA shall be responsible for the cost of operation, maintenance and fuel, and the safe and legal operation thereof, for such vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. The parties may supplement this Agreement to provide for an agreed schedule of replacement of such vehicles and equipment and provision of any other insurance coverage deemed necessary or appropriate.
- 2.5. Owner shall provide VEOLIA with, and shall be responsible for all costs associated with, all chemicals used in connection with the operation of the Project, and Owner shall provide VEOLIA with a sufficient inventory of such chemicals consistent with standard industry practices; provided, however, that Owner shall not be responsible for ordering dewatering polymer, and such dewatering polymer will be ordered by VEOLIA and the cost of such dewatering polymer will be billed by VEOLIA to Owner at VEOLIA's cost without markup.
- 2.6. Owner agrees to not offer employment or other compensation to Project Management and Supervisory personnel of VEOLIA directly working on this Project for a period of two (2) years after the end date of this Agreement or said employee's re-assignment from this Project.
- 2.7. Owner has provided to VEOLIA all data in Owner's possession relating to the Project. VEOLIA will reasonably rely upon the accuracy and completeness of the information provided by the Owner.

- 2.8. Owner confirms that is has not participated in the Aqueous Film-Forming Foam Product Liability Litigation brought against 3M, DuPont, Tyco and any other parties joined therein in the District Court for the District of South Carolina, Master Docket No. 2:18-MN-2873-RMG (the “PFAS Class Actions”) and has not and will not receive settlement funds from the PFAS Class Actions.
- 2.9. A Change in Law, a change in the Owner’s participation status in the PFAS Class Actions or any other PFAS-related class action case or similar litigation, a change in standard industry practices or legal requirements relating to any Hazardous Substances that materially changes the Direct Cost of performing the work, or a change in the levels of Hazardous Substances on, at, under, or affecting the Project that materially changes the Direct Cost of performing the work shall warrant and require the parties to: (i) meet, discuss, and agree to an appropriate adjustment to the Annual Fee and VEOLIA’s time for performance for increases in performance times, resource requirements, financial requirements, costs, or other increases, (ii) discuss capital expenditures and changes to operating expenses as such changes require, and (iii) discuss any other necessary or appropriate amendments to this Agreement. If the parties agree that such adjustments, expenditures, increases, or amendments are necessary to address a Change in Law, a standard industry practice relating to any Hazardous Substances, or the levels of Hazardous Substances on, at, under, or affecting the Project, the parties shall duly execute an amendment to this Agreement reflecting their agreement regarding the same.
- 2.10. If capital upgrades to the facilities are reasonably required in order to comply with changes in standard industry practices or legal requirements relating to any Hazardous Substances, then VEOLIA will not be required to meet such standards until such capital upgrades are made and an appropriate amendment to this Agreement has been executed by the parties. Notwithstanding the foregoing sentence, VEOLIA will use commercially reasonable efforts to ensure facility operations remain compliant with all local, state, and federal rules and regulations to the extent practicable with then-existing Project assets, and to the extent such efforts result in additional Costs for VEOLIA, VEOLIA will be entitled to a Change in Scope.

3. COMPENSATION AND PAYMENT

Compensation for the services is described in Appendix E.

4. TERM

- 4.1. The initial term of this Agreement shall be for five (5) years commencing on the Effective Date.
- 4.2. Either Party may terminate this Agreement for a material breach of this Agreement by the other Party after giving written notice of the breach and allowing the other Party thirty (30) days’ time to correct the breach. Neither Party shall terminate this Agreement without giving the other Party thirty (30) days’ written notice of intent to terminate for failure of the other Party to correct the breach within a reasonable time.
- 4.3. Beginning on the first anniversary of the Effective Date, either Party may terminate this Agreement at its discretion either with or without cause, by giving at least one hundred and twenty (120) days prior written notice.
- 4.4. Upon notice of termination by either Party, VEOLIA shall assist Owner in assuming or transferring the operation of the Project. If additional Cost is incurred by VEOLIA at the request of Owner, Owner shall pay VEOLIA such Cost within 30 (thirty) days of invoice receipt. If requested by Owner, VEOLIA will continue to provide the current operations staff for a period of up to ninety (90) days beyond the date of termination for a pro-rated Base Fee. If the current staff are not

available, VEOLIA will provide an operations staff for a period of up to ninety (90) days beyond the termination for a negotiated fee to include travel, per diem and associated labor costs.

- 4.5. Upon termination of this Agreement and all renewals and extensions of it, VEOLIA will return the Project to Owner in the same condition as it was upon the Commencement Date of this Agreement, ordinary wear and tear and repairs requested by VEOLIA but not approved by Owner excepted. If Owner incurs any additional costs associated with returning the Project to the original condition less ordinary wear and tear, VEOLIA shall pay Owner such costs within thirty (30) days of invoice receipt. Equipment and other personal property purchased by VEOLIA for use in the routine operation or maintenance practices of the Project and billed to the Owner in excess of the Base Fee shall become the property of the Owner upon termination of this Agreement, provided that Owner has reimbursed VEOLIA for such equipment and other personal property. However, any equipment or personal property that is purchased by VEOLIA and not billed to the Owner shall be the property of VEOLIA and shall be removed from the Project by VEOLIA at the termination of this Agreement.
- 4.6. Effect of termination. If the Agreement is terminated before the expiration date, Owner will compensate VEOLIA for work performed up until the effective date of the termination and any payments subject to Sections 4.4 and 4.5. Upon either expiration, timely termination, or early termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties and pursue all available rights and remedies under this Agreement.

5. INDEMNITY AND LIABILITY

- 5.1. VEOLIA agrees to indemnify, defend (with counsel reasonably acceptable to Owner) and hold harmless Owner and its officers, officials, employees and agents from and against all liability, loss, damage, expense, costs, including attorney fees, arising out of or associated with VEOLIA's work or duties as described herein, to the extent caused by (1) any willful misconduct or negligent act or omission of VEOLIA, its agents, any of its subcontractors, and anyone directly or indirectly employed by VEOLIA, its agents or its subcontractors, and anyone for whose acts any of them may be liable, (2) the negligent operation of the Project by or under the direction of VEOLIA, or (3) VEOLIA's failure to perform its duties under this Agreement, except to the extent caused by the Owner's willful misconduct or negligent act or omission.
- 5.2. It is understood and agreed that, in seeking the services of VEOLIA under this Agreement, Owner is requesting VEOLIA to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of Hazardous Substances. Therefore, to the fullest extent permitted by law, including the Oregon Constitution and the Oregon Tort Claims Act, Owner agrees to hold harmless, indemnify, and defend VEOLIA from and against any and all fines, claims, losses, damages, liability, and costs, including, but not limited to, costs of defense and costs to investigate, remediate, or otherwise respond to the actual or alleged presence of Hazardous Substances in accordance with applicable laws and regulations, arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of the negligent acts or omissions or willful misconduct of VEOLIA, its employees or its subcontractors in the performance of services under this Agreement.
- 5.3. TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL OWNER AND ITS OFFICERS, OR EMPLOYEES, ON ONE HAND, OR VEOLIA AND ITS SUBCONTRACTORS OR THEIR OFFICERS OR EMPLOYEES, ON THE OTHER HAND, BE LIABLE TO ONE ANOTHER IN ANY ACTION OR CLAIM FOR SPECIAL, INCIDENTAL, INDIRECT OR

CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER SUCH LIABILITY ARISES IN BREACH OF CONTRACT OR WARRANTY, TORT INCLUDING NEGLIGENCE, STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION. ANY PROTECTION AGAINST LIABILITY FOR LOSSES OR DAMAGES AFFORDED ANY INDIVIDUAL OR ENTITY BY THESE TERMS SHALL APPLY WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY OF ANY PROTECTED INDIVIDUAL OR ENTITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED. VEOLIA's responsibility is to operate the facilities in compliance with current laws and regulations, to the extent of the facility's design, capabilities and physical capacity. It is not part of VEOLIA'S scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations.

5.4. TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VEOLIA'S CUMULATIVE LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS SPECIFIED IN SECTION 5.1 OF THE AGREEMENT, SHALL NOT EXCEED (1) ANY AVAILABLE AND RECOVERED PROCEEDS FROM INSURANCE REQUIRED BY THIS AGREEMENT UP TO THE SPECIFIED LIMITS (WITHOUT REGARD TO THE AMOUNT OF ANY DEDUCTIBLE WHICH MAY BE APPLICABLE UNDER ANY SUCH POLICY) AND (2) TO THE EXTENT INSURANCE IS NOT APPLICABLE, TEN MILLION (\$10,000,000) FOR THE DURATION OF THE AGREEMENT, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VEOLIA IN BREACH OF VEOLIA'S OBLIGATIONS UNDER THIS AGREEMENT. FINES AND CIVIL PENALTIES.

6. FINES AND CIVIL PENALTIES

6.1. VEOLIA shall be liable for fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Effective Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance to the extent resulting from VEOLIA's breach, negligence or willful misconduct during the term of this Agreement (collectively, "Veolia Responsibility"). Owner will assist VEOLIA to contest any such fines in administrative proceedings and/or in court prior to any payment by VEOLIA. VEOLIA shall pay the costs of contesting that portion of such fines that arise due to Veolia Responsibility. Notwithstanding anything contained in this section, VEOLIA's liability for actual monetary stipulated penalties imposed on the City and payable to the U.S. Environmental Protection Agency or State of Oregon pursuant to the Consent Decree (as defined in Section 26 of this Agreement) in connection with discharge violations as set forth in the Consent Decree, shall not exceed (x) \$5,000 for each violation of each daily limit that is due to Veolia Responsibility; (y) \$10,000 for each violation of each weekly or seven-day limit that is due to Veolia Responsibility, pursuant to this section; and (z) \$20,000 for each violation of each monthly or 30-day limit that are is to Veolia Responsibility. VEOLIA shall additionally be responsible for any late payment penalties and interest on penalties attributable to VEOLIA.

6.2. VEOLIA shall not be liable for fines or civil penalties that result from violations that occurred prior to the Effective Date of this Agreement (unless covered by the existing agreement between

the parties) or are otherwise directly related to the ownership of the Project. Any violation that occurred prior to the Effective Date of this Agreement will be covered by the terms and conditions of the then-existing Agreement between the parties in which time the violation occurred.

- 6.3. OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or VEOLIA that are not a result of VEOLIA's breach, negligence or willful misconduct, or are otherwise directly related to the ownership of the Project, and shall indemnify and hold VEOLIA harmless from the payment of any such fines and/or penalties.

7. INSURANCE

- 7.1. VEOLIA shall provide the following insurances throughout the term of the Agreement, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:

1. Statutory Worker's Compensation and Employers Liability Insurance as required by the State in which the Project is located.
2. Automobile Liability Insurance with Two Million Dollars (\$2,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of VEOLIA owned or leased motor vehicles, including onsite and offsite operations.
3. Commercial General Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of VEOLIA or any of its employees, or subcontractors.
4. Pollution Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering operation of the wastewater treatment facilities only.

- 7.2. VEOLIA shall add Owner and Owner's elected officials, officers, and employees, as additional insured in VEOLIA's commercial general liability, automobile liability, excess/umbrella, and contractor's pollution liability policies.

- 7.3. VEOLIA's commercial general liability, automobile liability, employer's liability, excess/umbrella, and contractor's pollution liability policies will be primary and non-contributory to any other coverage available to Owner.

- 7.4. VEOLIA will provide at least thirty (30) days written notice to Owner prior to any cancellation, non-renewal or adverse material change in coverage required in Section 7 (except ten (10) days' notice for non-payment of premium).

- 7.5. Owner will maintain the following insurances throughout the term of the Agreement, and shall provide VEOLIA with Certificates of Insurance to demonstrate compliance with this provision:

- 7.5.1. Property Damage Insurance for all property including Owner supplied vehicles and equipment for the full fair market value of such property. Owner will obtain a waiver of subrogation in favor of VEOLIA and VEOLIA's insurers.

7.5.2. Liability Insurance for all motor vehicles and equipment provided by Owner and operated by VEOLIA under this Agreement.

7.6. Certificates of Insurance (“COI”).

7.6.1. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 7 and its subsections. COI will reference the project name as identified on the first page of this Agreement.

7.6.2. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.

7.6.3. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy’s renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party’s receipt.

8. LABOR DISPUTES

In the event activities by Owner’s employee groups or unions causes disruption in VEOLIA’s ability to perform its obligations under this Agreement, Owner, with VEOLIA’s assistance, or VEOLIA at its own option, may seek appropriate injunctive court orders during any such disruption, VEOLIA shall operate the facilities on a best efforts basis until any such disruptions cease, but VEOLIA cannot assure compliance with all contract conditions.

9. UNFORESEEN CIRCUMSTANCES

Neither party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The party invoking this clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance, and shall recommence its obligations as soon as reasonably possible following the conclusion of the event or condition leading to the Unforeseen Circumstance.

In the case of Unforeseen Circumstances Owner agrees to pay any undisputed Costs incurred by VEOLIA in connection with the Unforeseen Circumstance. Before payment is made, VEOLIA shall provide the Owner with an itemized list of Costs and explanations. Any disputed costs will be reviewed and negotiated by both parties to determine final payment.

10. ACCESS TO FACILITIES AND PROPERTY

Owner will make its facilities accessible to VEOLIA as required for VEOLIA’S performance of its services, and will secure access to any other Owner property necessary for performance of VEOLIA’s services.

VEOLIA shall provide 24-hour per day access to Project for Owner’s personnel. Visits may be made at any time by any of Owner’s employees so designated by Owner’s representative. Keys for the Project shall be provided to Owner by VEOLIA. All visitors to the Project shall comply with VEOLIA’s operating and safety procedures.

11. CONTRIBUTIONS TO THE INDUSTRIAL ACCIDENT FUND

VEOLIA shall pay all contributions or amounts due the Industrial Accident Fund from VEOLIA incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

12. LIENS AND CLAIMS

VEOLIA shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. (ORS 279B.220)

13. INCOME TAX WITHHOLDING

VEOLIA shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279B.220).

14. INDEPENDENT CONTRACTOR

14.1. VEOLIA is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. As an independent contractor, VEOLIA is not entitled to indemnification by Owner or the provision of a defense by Owner under the terms of ORS 30.285. This acknowledgment by VEOLIA does not affect its independent ability (or the ability of its insurer) to assert the monetary affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

14.2. Worker's Compensation Coverage. VEOLIA hereby certifies that it has qualified for State of Oregon Worker's Compensation coverage either as carrier-insured employer or as a self-insured employer. (ORS 279B.230).

15. MEDICAL CARE FOR EMPLOYEES

VEOLIA shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of VEOLIA's employee(s), all sums which VEOLIA agrees to pay for such services and all monies and sums which Owner collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230).

16. SAFETY AND HEALTH REQUIREMENTS

VEOLIA shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

VEOLIA shall post compliance documents as required by applicable law. VEOLIA shall conduct safety training as required by applicable law, and Owner shall have the right to inspect records of such training during normal business hours.

17. PAYMENT REQUIREMENTS (ORS 279B.220)

VEOLIA shall make payment promptly, as due, to all persons supplying to VEOLIA labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220). If VEOLIA fails, neglects, or refuses to make a prompt payment of any claim for labor or services furnished to VEOLIA or a subcontractor, or by any person in connection with this contract as the claim becomes due, the Owner may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to VEOLIA pursuant to this contract. The Owner's payment of a claim under this Section shall not relieve VEOLIA or VEOLIA's surety, if any, from responsibility for those claims.

18. NONDISCRIMINATION

VEOLIA agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

19. FOREIGN CONTRACTOR

If VEOLIA is not domiciled in or registered to do business in the state of Oregon, VEOLIA shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement.

20. TAX LAW COMPLIANCE

VEOLIA (to the best of VEOLIA's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the Effective Date of this Agreement, faithfully has complied with, and for the term of this Agreement shall continue to comply with: (1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (2) Any tax provisions imposed by a political subdivision of this state that applied to VEOLIA, to VEOLIA's property, operations, receipts, or income, or to VEOLIA's performance of or compensation for any work performed by VEOLIA; (3) Any tax provisions imposed by a political subdivision of this state that applied to VEOLIA, or to goods, services, or property, whether tangible or intangible, provided by VEOLIA; and (4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

21. HOURS OF WORK

VEOLIA shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair Labor Standards Act of 1938 (29 USC §201 et. seq.). Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC §201 to 209, shall be paid at least time and a half for all overtime worked in excess of 10 hours in any one day or 40 hours in any one week, and for all work performed on a Saturday or any legal holiday, or for all work performed on any other holiday specified in a collective bargaining agreement. (ORS 279B.235).

22. PUBLIC WORKS

VEOLIA and Owner do not intend that the Preventative Maintenance VEOLIA is to perform under this Agreement will constitute "Public Works" as defined in ORS 279C.800. However, VEOLIA and Owner understand and agree that Repairs and Major Repairs, as non-routine or major reparative work, performed under this Agreement likely constitute "Public Works" as defined in ORS 279C.800 ("Prevailing Wage Work"). Accordingly, upon initiation of the first Repair or Major Repair pursuant to this Agreement, the parties shall mutually execute a task order and undertake all respective obligations as set forth in Appendix G. At such time, the Owner represents and warrants that it shall notify the Commissioner of the Oregon Bureau of Labor and Industries prior to VEOLIA undertaking any Prevailing Wage Work, as provided in ORS 279C.835. The applicable prevailing rate of wage shall be the rate in effect at the time VEOLIA first undertakes such Repairs or Major Repairs. In the event that VEOLIA is required to pay prevailing wages for the operations and maintenance services set forth in Appendix B (other than Major Repairs, Repairs, replacements, or other capital projects) (such services, the "O&M Work"), then that circumstance will be deemed a Change in Law and VEOLIA and Owner shall execute a mutually agreeable amendment changing VEOLIA's Base Fee. In the event that VEOLIA is required to pay back pay

or fines relating to prevailing wage for VEOLIA's O&M Work in connection with this Agreement or for work performed under the Original Agreement, then City and VEOLIA shall negotiate and execute a reasonable change order to compensate VEOLIA for such costs.

23. CHANGES

Owner and VEOLIA may mutually make changes within the general scope of services of this Agreement. The contract price and schedule will be equitably adjusted pursuant to a written Change Order, individual task order, modification or amendment to the Agreement executed by both parties. For clarity's sake, any change order, individual task order, modification, or other amendment to the provisions of this Agreement shall be reduced to writing and signed by the authorized agents of Owner and VEOLIA in order to be effective.

24. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than Owner and VEOLIA and has no third party beneficiaries.

25. JURISDICTION

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon without regard to conflict of law principles. Venue shall be in Clackamas County, Oregon.

26. CONSENT DECREE

The Owner has provided VEOLIA with a copy of the Consent Decree between the Owner and the United States of America and the State of Oregon dated September 11, 2023 (the "Consent Decree"). To the extent that the terms of the Consent Decree apply to VEOLIA's scope of services set forth in Appendix B, then VEOLIA's performance of such services shall be in conformity with the terms of the Consent Decree; provided, however, that (i) any changes in VEOLIA's scope of services required by changes in the terms of, interpretation of, or determination made by EPA or DEQ regarding the Consent Decree shall be treated as a Change in Law and (ii) VEOLIA shall have no liability to any party in connection with the Consent Decree, and, to the fullest extent permitted by law, including the Oregon Constitution and the Oregon Tort Claims Act, Owner agrees to hold harmless, indemnify, and defend VEOLIA from and against any and all fines, claims, losses, damages, liability, and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the Consent Decree, excepting only such liability as may arise out of the negligent acts or omissions or willful misconduct of VEOLIA, its employees or its subcontractors in the performance of services under this Agreement.

27. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The provisions of this Agreement that by their sense and context are intended to survive expiration of this Agreement shall survive.

28. AUTHORITY

Both parties represent and warrant to the other party that the execution delivery and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the party.

29. NOTICES

All notices shall be in writing and delivered, mailed or e-mailed to each Party at the respective addresses written below. All notices shall be deemed given (i) if delivered personally or by

messenger, upon delivery, (ii) if delivered or sent by overnight mail or overnight courier, on the scheduled day of delivery or such earlier time as is confirmed by the receiving Party, (iii) if sent by registered or certified first class mail, upon the sooner of the date on which receipt is acknowledged or the expiration of three (3) days after deposit in United States post office facilities properly addressed with postage prepaid, or (iv) if delivered or sent by e-mail, on the day of transmittal if transmitted during normal business hours or on the next business day if not transmitted during normal business hours. Notice of change of address shall be provided in the same manner, and such change shall not be deemed a modification or amendment to the Agreement.

Owner's Project Manager:
 Ryan Wood
 Public Works Superintendent
 39250 Pioneer Blvd.
 Sandy, OR 97055

Veolia Water North America-West, LLC
 4160 Temescal Canyon Road, Suite 311
 Corona, CA 92883
 Attn: West Region President

Veolia Water North America-West, LLC
 Attn: General Counsel
 53 State Street, 14th Floor
 Boston MA 02109
 Attn: General Counsel

30. RECORDS

VEOLIA agrees that Owner and its authorized representatives shall have access during normal business hours to all books, documents, papers and records that are directly related to the Project for the purpose of making any audit, examination, copies, excerpts and transcripts.

31. WORK IS PROPERTY OF OWNER

All work, including but not limited to process data, documents, drawings, papers, photographs, and reports ("Deliverables"), performed or produced by VEOLIA under this Agreement shall be the property of Owner. VEOLIA may retain copies of said Deliverables as desired but will deliver all original materials to Owner upon Owner's written notice. Owner agrees that use of VEOLIA'S completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at Owner's own risk. Except as provided by this Agreement, VEOLIA shall retain ownership of its business records and Owner shall have no right to view or obtain copies of such business records, except pursuant a subpoena lawfully issued by court of competent jurisdiction. Notwithstanding the foregoing, VEOLIA shall retain the right to use the ideas, concepts, know-how, and techniques derived from the rendering of the Deliverables, and VEOLIA shall be entitled to any and all protections afforded under state and federal statutory or common law with respect to any materials that were prepared, developed or used by VEOLIA prior to or outside the scope and course of completing the Services performed under the terms of this Agreement ("VEOLIA Intellectual Property"), and such VEOLIA Intellectual Property shall remain the intellectual property of VEOLIA and shall not be the property of Owner. In the event (and to the extent) that any Deliverable contains any items or elements that are VEOLIA Intellectual Property, VEOLIA

grants to Owner an irrevocable, perpetual, royalty-free limited license to use, execute, display and/or perform such to the extent it is necessary to fulfill Owner's purposes under this Agreement.

VEOLIA shall maintain all records and accounts concerning the operation, maintenance and repair of the Project in accordance with generally accepted accounting principles. All such records and accounts shall be retained by VEOLIA and kept accessible for a minimum of five (5) years from the expiration or termination of this Agreement, except as required longer by law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

32. VEOLIA TRADE SECRETS AND OPEN RECORDS REQUESTS

Public Records. VEOLIA acknowledges and agrees that all documents in Owner's possession, including documents submitted by VEOLIA, are subject to the provisions of the Oregon Public Records Law, and VEOLIA acknowledges that Owner shall abide by the Oregon Public Records Law, including honoring all proper public records requests. VEOLIA shall be responsible for all VEOLIA's costs incurred in connection with any legal determination regarding the Oregon Public Records Law, including any determination made by a court pursuant to the Oregon Public Records Law. VEOLIA is advised to contact legal counsel concerning such acts in application of the law to VEOLIA.

Confidential or Proprietary Materials. If VEOLIA deems any document(s) which VEOLIA submits to Owner to be confidential, proprietary or otherwise protected from disclosure under the Oregon Public Records Law, then VEOLIA shall appropriately label such document(s), and submit such document(s) to the Owner together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request. The request will either be approved or denied by the Owner in the Owner's reasonable discretion. The Owner will make a good faith effort to accommodate a reasonable confidentiality request if the Owner reasonably determines the material may be withheld under the Oregon Public Records Law.

33. OWNER CONFIDENTIALITY

VEOLIA agrees that if the Owner so requests, VEOLIA will execute a confidentiality agreement in a form reasonably acceptable to Owner and VEOLIA, and VEOLIA will require any employee or sub-consultant performing work under this Agreement or receiving any information reasonably deemed confidential by the Owner to execute such a confidentiality agreement.

34. SUBCONTRACTORS

VEOLIA is solely and fully responsible to the Owner for the performance of its services under this Agreement. Except in cases of emergency (as determined in VEOLIA's reasonable discretion), VEOLIA shall seek Owner's pre-approval to use any subcontractor for work conducted at the Project, which approval will not be unreasonably withheld, and VEOLIA shall otherwise promptly inform Owner of its use of such subcontractors following execution of any subcontractor agreements. VEOLIA agrees to pass through all legally required provisions and other reasonably relevant provisions of this Agreement into the contracts of any subcontractors conducting work at the Project, and to do so to the extent reasonably practicable and reasonably relevant for all other subcontractor contracts directly related to the Project. VEOLIA shall pay or cause each subcontractor to pay all wages, salaries and other amounts due to VEOLIA's subcontractors in performance of the duties set forth in this Agreement and shall be responsible for any and all reports

and obligations with respect to such subcontractors. All subcontractors shall have the skill and experience and any license or permits required to perform the services assigned to them.

35. ASSIGNMENT

Neither party shall assign this Agreement or parts hereof or its duties hereunder, but not including work products produced by VEOLIA, without the express written consent of the other party. In the event of dissolution, consolidation or termination of the Owner, the parties agree that the Owner may assign to a successor entity any rights, obligations and functions it may have remaining under this Agreement.

36. OBSERVE ALL LAWS; DUTY TO INFORM

VEOLIA shall keep fully informed regarding and materially comply with all federal, state, and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having jurisdiction or authority which may affect those engaged or employed in the performance of this Agreement.

VEOLIA shall give prompt written notice to Owner's Project Manager if, at any time during the performance of this Agreement, VEOLIA becomes aware of actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement, any nonconformity with any federal, state, or local law, rule or regulation, or any nonconformity with any order or decree of any body or tribunal having jurisdiction or authority, or has any objection to any decision or order made by Owner. Any delay or failure on the part of Owner to provide a written response to VEOLIA shall constitute neither agreement with nor acquiescence in VEOLIA's statement or claim and shall not constitute a waiver of any of Owner's rights.

For avoidance of doubt, an order or decree of a tribunal having jurisdiction or authority, for purposes of this Section, includes but is not limited to the Consent Decree between the City of Sandy, the United States, and the State of Oregon that was entered in the U.S. District Court for the District of Oregon on September 11, 2023.

37. MEDIATION/TRIAL WITHOUT A JURY

Should any Agreement-related dispute arise between the Parties, which does not involve claims made by or asserted against third parties, and if the dispute cannot be settled through negotiation in good faith, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through non-binding mediation and only in the event said mediation efforts fail, then through litigation.

EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Sandy, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Agreement-related disputes through the mediation process. If a Party requests mediation and the other Party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either Party. The Parties shall retain all rights with respect to any dispute not covered by this Section. The period for mediation shall commence upon the appointment of the mediator and shall

not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.

38. BINDING AGREEMENT

This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigners of the parties hereto.

39. NO WAIVER

No waiver of any provisions of this Agreement shall be deemed to constitute a waiver of any other provision of the Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

40. ENTIRE AGREEMENT; INTERPRETATION

This Agreement, together with all Appendices attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Appendices. The parties mutually declare there are no oral understandings or promises not contained in the Agreement which contains the complete, integrated, and final agreement between the parties. Any conflict between this Agreement and any of the Appendices (if any) shall be resolved first in favor of this Agreement, then in the order of the Appendices listed in the Table of Contents.

41. COUNTERPARTS; ELECTRONIC SIGNATURES

The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same Agreement. Any party shall be entitled to sign and transmit electronic signatures to this Agreement (whether by facsimile, .pdf, or electronic mail transmission), and any such signature shall be binding on the party whose name is contained therein. Any party providing an electronic signature to this Agreement agrees to promptly execute and deliver to the other parties, upon request, an original signed Agreement.

Both parties indicate their approval of this Agreement by their signatures below, and each Party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

Veolia Water North America-West, LLC

City of Sandy, Oregon

By: _____

By: _____

Name: Aaditya Raman

Name: Tyler Deems

Title: President

Title: City Manager

NEW

APPENDIX A
DEFINITIONS

- A.1. “Adequate Nutrients” means plant influent nitrogen, phosphorous, and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BODs.
- A.2. “Base Fee” means the compensation paid by Owner to VEOLIA for the base services defined in Appendix B of this Agreement for any year of the Agreement. The Base Fee is specified in Appendix E.1 and will be adjusted annually in accordance with Base Fee Formula specified in Appendix E.3. This compensation does not include payments for Requests by Owner that are incidental to or outside the Scope of Services.
- A.3. “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of Owner’s NPDES permit. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.4. “BOD” means Biochemical Oxygen Demand over a five (5) day period.
- A.5. “Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially changes the Direct Cost of performing the work: the adoption, amendment, promulgation, issuance, modification, specifically changed by any local, state, federal or other governmental body. VEOLIA and Owner shall negotiate a mutually agreeable change in VEOLIA’s Base Fee for any change in law which results in a significant change to the Direct Cost incurred to perform the scope of services. If the change results in a decrease in price, VEOLIA and Owner shall negotiate the change and apply a credit to the Base Fee.
- A.6. “Change in the Scope” are defined in Appendix B.4.
- A.7. “Cost” means the total of all Direct Cost and indirect cost determined on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP).
- A.8. “Direct Cost” means the actual cost incurred for the direct benefit of the Project, including but not limited to, expenditures for Project management labor, employee benefits, chemicals, lab suppliers, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools memberships and training supplies.
- A.9. “Hazardous Substance” means any waste, substance, object, or material deemed hazardous under applicable law, including (a) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; (b) “hazardous waste” as defined in the “hazardous waste” under the Resource, Conservation and Recovery Act; and (c) “emerging contaminants” as identified by the U.S. Environmental Protection Agency or other governmental authorities due to their potential for adverse impacts to human health or the environment, specifically including, without limitation, perfluoroalkyl and polyfluoroalkyl substances (“PFAS”) such as perfluorooctanoic acid (“PFOA”) and perfluoro octane sulfonate (“PFOS”). As used herein, “Hazardous Substances” also means materials, equipment, physical property, soil, groundwater or stormwater that are contaminated with Hazardous Substances.

- A.10. “Major Repairs” mean those Repairs that cost more than Two Thousand Five Hundred Fifty Dollars (\$2,550.00).
- A.11. “Preventive Maintenance” means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or VEOLIA to maximize the service life of the equipment, sewer, vehicles, and facility.
- A.12. “Project” means all equipment, vehicles, grounds, and facilities described in Appendix D and where appropriate, the operations, maintenance, and management of such.
- A.13. “Repairs” means those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof. However, if the need for the repair is caused by VEOLIA negligent or willful acts or omissions, such expenditure will not be a “repair” under this agreement, will not be deducted from the Repair Limit and will be VEOLIA’s sole responsibility.

Scheduled replacement per manufacturer’s recommendations of the following specific consumables shall not be considered Repairs and the cost for same (excluding labor for installation) shall be the responsibility of the City:

- Effluent disc filter media cloth covers
- Ultraviolet disinfection system lamps, ballasts, wipers and sleeves

- A.14. “TSS” means total suspended solids.
- A.15. “Unforeseen Circumstances” means an event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, and which is beyond the reasonable control of the party relying thereon and constitutes a reasonable justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) landslide, lightening, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war blockade, sabotage, insurrection, riot or civil disturbance or a pandemic event; (ii) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strike or work slowdowns or stoppages by employees of VEOLIA; (iii) the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project; and (iv) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

APPENDIX B
SCOPE OF SERVICES

VEOLIA SHALL:

B.1. GENERAL

- B.1.1. Subject to the Maintenance and Repairs Limit, alter as needed, the process and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without Owner's written approval if alteration shall cost in excess of One Thousand Dollars (\$1,000.00).
- B.1.2. Operate, maintain and/or monitor the Project such that the Project is staffed at least Monday through Friday, eight (8) hours per day and a reduced but sufficient number of hours per day (Saturday, Sunday, Holidays) as necessary to meet operational needs. VEOLIA shall be responsive to alarms and emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. VEOLIA shall designate, as a minimum, one staff member as standby to respond to such calls.
- B.1.3. Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the State.
- B.1.4. Pay all Costs incurred in normal Project operations except as otherwise included in Article 2 - Owner's Responsibilities.
- B.1.5. Perform Preventative Maintenance and Repairs for the Project, subject to the Repairs Limit.
- B.1.6. Maintain aesthetics of the facilities:
 - B.1.6.1. In general, maintain the WTP and WWTP site and grounds in a clean, neat, and orderly fashion to present a positive image of the facility and program.
 - B.1.6.2. Administrative and other occupied spaces shall be kept clean, dry, and habitable
 - B.1.6.3. Other spaces and floors shall be free of sewage, screenings, sludge, debris, etc.
 - B.1.6.4. Equipment, tools, and material will be properly stored.
 - B.1.6.5. Trees and shrubs shall be kept trimmed, grass shall be maintained, and other grounds shall be free of noxious weeds.
- B.1.7. Place at each permanently staffed Project facility, a copy of VEOLIA's Corporate Safety Program and provide all employees training specific to this Program, within forty-five (45) days from the Effective Date of this Agreement. The cost of any capital improvement required at the Project to bring the facilities within OSHA compliance will be paid by the Owner.
- B.1.8. Provide job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, laboratory, and energy management. All such training shall be fully documented. Where employees are required by law or regulation to hold current licenses, certificates or authority to perform the work required of their respective

- positions, VEOLIA shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.
- B.1.9. In any emergency affecting the safety of persons or property, VEOLIA shall act without written amendment or change order, at VEOLIA's discretion, to prevent threatened damage, injury or loss; provided however, that VEOLIA shall obtain prior Owner approval for any emergency expenditure in excess of Five Thousand Dollars (\$5,000.00). VEOLIA will notify Owner as soon as reasonably possible and shall be compensated by Owner for any such emergency work notwithstanding the lack of written amendment or change order. VEOLIA will invoice Owner the amount mutually agreed to by the Parties for the emergency expenditure.
- B.1.10. Utilize Owner provided security devices during VEOLIA's hours of operation to protect against any losses resulting from theft, damage or unauthorized use of the Project. Existing security devices include: fencing, access gates, lockable structures, and limited intrusion alarm. Upon exiting the Project, VEOLIA shall make sure that all Project gates and structures are locked and that any security alarms are activated.
- B.1.11. Comply with all Federal and OR-OSHA regulations relating to bloodborne pathogens, confined space entry, fall protection, and any other applicable occupational health and safety requirements.
- B.1.12. Review the existing plant emergency action plan and provide an updated plan (if needed).
- B.1.13. VEOLIA shall provide Owner with a listing of any recommended Major Repairs that VEOLIA believes will be required for any of the facilities covered under the contract. Owner may choose to act on these recommendations upon review with Owner's Consulting Engineer. If Owner agrees with any of the recommendations provided, Owner shall attempt to budget for the necessary expenditure(s) in the next regularly scheduled biennial budget preparation cycle. However, VEOLIA shall not be relieved of its responsibilities to perform if the recommendations are not implemented and the City will be responsible for any fines, penalties or regulatory actions or consequences incurred if it can be demonstrated that such occurred as a result of these recommendations not being implemented. If VEOLIA believes the recommendation is necessary to perform its responsibilities and Owner continues to disagree, VEOLIA may terminate the Agreement pursuant to Section 4.3.
- B.1.14. VEOLIA shall prepare monthly operations reports with respect to the Project in a format to be reasonably agreed to by both Parties by the seventeenth (17th) day of each month for the prior month.
- B.1.15. Perform testing and analysis as set forth in Table B-1. For each contract year beginning on the anniversary of the Effective Date, VEOLIA will provide Owner with an analysis of all tests and analyses performed for the Project, and if the number of any test or analysis exceeds 10% of the annual total listed in Table B-1 for such test or analysis, Owner shall compensate VEOLIA for VEOLIA's reasonable, documented costs associated with such additional testing or analysis.
- B.1.16. VEOLIA shall verbally or by email notify the Owner of past or potential future non-compliance with any material prohibitions or limitations in the NPDES Permit or the regulations governing the water discharged from the WTR Plant, within 24 hours of having knowledge of such noncompliance. Owner shall promptly notify the appropriate regulators of

such non-compliance in accordance with the Consent Decree, the NPDES Permit, and all other applicable legal requirements. VEOLIA shall prepare a written notification to Owner within three (3) calendar days of knowledge of such noncompliance.

- B.1.17. VEOLIA shall develop and maintain process control management plans and for the water and wastewater treatment systems.
- B.1.18. VEOLIA shall provide Owner with monthly updates regarding the inventory of chemicals used in connection with the operation of the Project, and VEOLIA will notify Owner by email of any material chemical shortages that occur outside of the standard chemical usage of the Project. Consistent with Section 2.5 of the Agreement, Owner shall not be responsible for ordering dewatering polymer, and such dewatering polymer will be ordered by VEOLIA and the cost of such dewatering polymer will be billed by VEOLIA to Owner at VEOLIA's cost without markup.
- B.1.19. VEOLIA shall not be responsible for maintenance, repair, or replacement of any underground asset (including piping of any diameter) at the Project; provided that if VEOLIA becomes aware of any maintenance, repair, or replacement needed on, or any change in the operational status of, any underground asset, VEOLIA shall promptly notify Owner of such need or status change. Owner shall be solely responsible for any maintenance, repairs, or replacement of any underground asset at the Project.

B.2. WASTEWATER TREATMENT PLANT

- B.2.1. Within the design capacity and capability of the Wastewater Treatment Plant (the "WW Plant"), manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets of the Clean Water Act and the requirements specified in NPDES Permit No. 102492 issued January 23, 2010 (copy attached), and other applicable/related permits issued by EPA, the State or local authorities, unless one or more of the following occurs: (1) WW Plant influent does not contain Adequate Nutrients to support operation of the WW Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing processes and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in Section 13.12.080 of the Sandy Municipal Code; and (3) the flow, influent biochemical demand (BODs,) and/or total suspended solids (TSS) exceeds the WW Plant's design parameters that exceed the plants Maximum Allowable Headworks Loadings in which case Appendix C specifies responsibilities and remedies.
- B.2.2. Within the design capacity and capability of the WW Plant, operate the WW Plant in a manner such that odor and noise are minimized.
- B.2.3. Operate and maintain effluent filtration and UV disinfection systems. Replace disk filter media and UV system components per industry standard.
- B.2.4. Operate sodium hypochlorite disinfection system and recycled water pump station during land application season.
- B.2.5. Prepare and submit to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified herein. VEOLIA shall

comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Plant.

- B.2.6. When daily flow exceeds 25% of the average daily flow for the prior calendar year, VEOLIA will implement additional monitoring and analysis, which will be compensated in accordance with Section B.1.15.
- B.2.7. Assist the Owner with the NPDES permit renewal process by providing Project information within VEOLIA's possession and control. Any additional assistance requested by the Owner will be handled as a Change in Scope.
- B.2.8. Operate and maintain, to its design capacity and capability, the solids handling system, including polymer addition in compliance with the biosolids handling plan and regulatory requirements.
- Owner to provide hauling and disposal of screenings, grit, scum, sludges, and biosolids (collectively, "Residuals") for disposal.
- B.2.9. Provide computerized maintenance, process control and laboratory management systems for the Project. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.
- B.2.10. Perform all laboratory testing and sampling for process control and as currently required by the State and Federal Clean Water Act, NPDES permit NPDES referenced documents and all Federal or State issued permits. Develop, follow and maintain a QA/QC program for laboratory equipment processes and procedures and comply with all OR-OSHA and other applicable laboratory and chemical safe handling requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.2.11. Provide and document all Preventive Maintenance for the WW Plant. Owner shall have the right to inspect these records during normal business hours.
- B.2.12. Provide and document Repairs for the WW Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.
- B.2.13. Owner will be responsible for all utilities, including power costs, internet, and phone service at the Wastewater Treatment Plant during the term of the Agreement. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities. Solid waste disposal (trash and bar screenings) are collected by the Owner's solid waste franchisee at no cost to the project.

B.3. WATER TREATMENT PLANT

B.3.1. Within the design capacity and capability of the Water Treatment Plant (“WTR Plant”), manage, operate, and maintain the WTR Plant, as set forth in this Section B.3.1, so that finished water discharged from the WTR Plant meets the requirements specified by the State of Oregon and U.S. EPA for Public Water Systems and National Primary Water Treatment Regulations as required by the Safe Drinking Water Act and as outlined in Appendix C.

B.3.1.1. For raw water sourced from Portland Water Bureau:

- Operate and maintain booster pumps;
- Operate and maintain the Bull Run Supply Pump Station and set pump start/stop setpoints
- Operate and maintain Revenue Avenue transfer pumps including start/stop setpoints.

Operation and maintenance of the chemical feed system and the carbon filter stream is not included as part of the scope.

B.3.1.2. For the Alder Creek Water Treatment Plant:

- Operate and maintain diversion dam and intake screens. Seasonally remove or install splash boards as necessary to provide positive suction head at raw water booster pump station;
- Operate and maintain raw water booster pump station and variable frequency drives;
- Operate and maintain streaming current monitors and chemical mixing and feed systems;
- Operate and maintain clarifiers and filters;
- Operate and maintain finished water pumps and set pump start/stop setpoints to maintain reservoir levels and adequate filter backwash water supply;
- Operate and maintain the on-site diesel generator, including all expendables (fuel, oil, etc.). Perform load bank testing at least bi-annually. This includes the diesel generator at the Terra Fern reservoir and pump station.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

B.3.1.3. For Brownell Springs:

- Operate and maintain chemical feed equipment;

- Maintain disinfectant inventory at the site by safely transporting and transferring small quantities of disinfectant to the site; and
- Maintain plant equipment, building and components.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

- B.3.1.4. For Hudson Road Booster Pump Station and Revenue Ave. Transfer Pump Station:
- Operate and maintain the on-site diesel generator, including all expendables, (fuel, oil, etc.) at the Hudson Rd. site and the natural gas generator at Revenue Ave. site including all expendables. Perform load bank testing at least biannually. Owner will be responsible for natural gas service at the Revenue Ave. site.
 - Maintenance of the underground piping of any diameter at this site will be performed by the Owner
- B.3.1.5. VEOLIA shall be responsible for meeting potable water quality limitations established therein unless the raw water supply contains substances, materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the WTR Plant.
- B.3.2. Assist the Owner with the disposal of Residuals to permitted disposal sites. Any Cost of this service due to permitting requirements, increased or unusual quantities of material, or increases in landfill rates, hauling costs, or tipping fees shall constitute a change in scope and give cause for an adjustment in fee. Owner and VEOLIA agree that Owner is the Generator of the Residuals.
- B.3.3. Perform all laboratory testing and sampling currently required by the State and Federal Safe Drinking Water Regulations at the entry point and upstream as shown in Appendix V. Develop, follow and maintain a QA/QC program for laboratory equipment process and procedures. Comply with OR-OSHA and all applicable laboratory and chemical handling safety requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.3.4. Provide and document all Preventive Maintenance for the WTR Plant. Owner shall have the right to inspect these records during normal business hours.
- B.3.5. Provide and document Repairs for the WTR Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such Repair. However, due to the size, complexity, technical nature, or timing for completion of such Repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such Repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.
- B.3.6. Provide and document Repairs for the WTR Plant in a mutually-agreed format by the seventeenth (17th) day of each month for the prior month.

- B.3.7. Provide monthly water production, peak day and regulatory compliance data by source in a mutually-agreed format by the seventeenth (17th) day of each month for the prior month.
- B.3.8. Owner will be responsible for all power costs at the Water Treatment Plant and associated sites during the term of the Agreement. VEOLIA will be responsible for all other utility costs, (telephone, SCADA circuits, satellite internet, solid waste disposal) at the facility. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities

B.4. SCOPE CHANGES

- B.4.1. A Change in Scope of services shall occur when and as VEOLIA's costs of providing services under this Agreement change as a result of:
 - B.4.1.1. Any change in Project operations, personnel qualifications, required certification, staffing or other cost which is a result of an Unforeseen Circumstance. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs.
 - B.4.1.2. The current WWTP NPDES permit is being renewed. Any change in Project operations, personnel qualifications, required certification, staffing or other cost as a result of the issuance of new Permit or permit renewal shall constitute a Change in Scope. Increases or decreases of not less than ten percent (10%) in the Wastewater Plant influent flow or loadings, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Effective Date of this Agreement. The Parties must mutually agree upon compensation for the Changes in Scope.
 - B.4.1.3. Increases or decreases of not less than ten percent (10%) in the Water Plant average daily production, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Effective Date of this Agreement. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change is Scope occurs. Owner's request of VEOLIA, and VEOLIA's consent, to provide additional services. Owner and VEOLIA shall negotiate an increase in VEOLIA's Base Fee for these Changes in Scope
- B.4.2. At any time, the Owner may request VEOLIA to provide support services for Owner's capital projects. In this case VEOLIA shall propose a scope of services, schedule and budget identifying Direct Costs and overhead/profit charges. VEOLIA shall not proceed with any such capital project services without express written authorization of Owner.
- B.4.3. Efficiency Changes. During the term of this Agreement, Owner may elect to design, develop, and construct a capital project or other changes to the Project for the purpose of enhancing the efficiency of the Project and reducing the costs of the Project (such changes, an "Efficiency Project"). Efficiency Projects that use joint capital investment from VEOLIA and Owner shall include a savings sharing component to be negotiated and agreed to in writing by both Parties prior to the commencement of the Efficiency Project based on the funding contribution of each Party, taking into account the provisions below. Any verified savings of Owner achieved through an Efficiency Project funded in whole or in part by VEOLIA shall be paid by Owner to VEOLIA as increased compensation until VEOLIA's recovery of its capital investment in

such Efficiency Project, plus 8% (the “Investment Amount”), and, thereafter, any savings shall be shared and credited eighty percent (80%) to VEOLIA (as increased compensation) and twenty percent (20%) to Owner, and if this Agreement is terminated or the term of the Agreement expires (the date of such termination or expiration, the “Termination Date”) prior to VEOLIA’s full recovery of any Investment Amount, then Owner will reimburse VEOLIA for any Investment Amount that has not been reimbursed by the Termination Date. Any verified savings achieved through an Efficiency Project suggested by VEOLIA but funded by Owner shall be shared and credited eighty percent (80%) to Owner and twenty percent (20%) to VEOLIA (as increased compensation), which savings sharing will be in recognition of the importance of incentivizing optimal operation and maintenance of any Efficiency Project and to ensure that VEOLIA will monitor and adjust the relevant processes to achieve efficiencies. The savings allocation in this Section B.4.3 is in addition to any changes in compensation related to a Change in Scope that may result from an Efficiency Project.

NEW

Table B-1

<i>Wastewater Regulatory Testing</i>	<i>Annual Totals</i>	
BOD		156
TSS		156
Ammonia		52
E.Coli		52
Total Coliform		78
Total Chlorine Residual		184
<i>Quarterly Analyses</i>		
Metals		3 (9 different metals)
Tickle Creek Metals		3 (10 different metals)
Alkalinity		6
TKN		3
Ammonia		3
Nitrate-Nitrite as N		3
Phosphorus		3
<i>Biosolids Annual Testing</i>		
Total Solids		1
Volatile Solids		1
Nitrite as N		1
Ammonia		1
Phosphorus		1
TKN		1
Waste pH		1
Metals (As, Cd, Cu, Hg, Mo, Ni, Pb, Se, Zn)		1
Potassium		1
<i>Stormwater Regulatory Analysis</i>		
Fats, Oils, Greases		4
TSS		4
Copper, Lead & Zinc		4
E.Coli		4
<i>Drinking Water Regulatory Analysis</i>		
VOC's		1
Nitrate		2
Alkalinity		4
TOCs		4

APPENDIX C
CAPACITY AND CHARACTERISTICS

C.1. RAW WATER QUALITY AND FINISHED WATER REQUIREMENTS OF WATER TREATMENT PLANT

C.1.1. The facilities shall be operated and maintained in accordance with all applicable federal, state and local regulations pertaining to water treatment, contaminant monitoring, and reporting. All analytical methods used to demonstrate compliance shall be in accordance with methods approved by the Owner and State Agencies, as applicable. In the event the parameter does not have a method approved by Federal and State Agencies, VEOLIA will utilize alternate test methods approved by EPA in 40 CFR, 141, Subpart C.

C.1.2. Plant Capacity

VEOLIA shall assume an average day demand (for water of 1.21 mgd and a peak daily demand of 1.792 mgd as of the Effective Date. VEOLIA acknowledges that the Owner has the right to demand up to 3.5 mgd (including 0.5 mgd from the Portland Water Bureau source) on any day, and VEOLIA shall undertake, as and when needed, the necessary arrangements to assure that sufficient personnel are available to satisfy additional demand overtime. If Owner communicates any changes in the average daily demand for water as listed above, this will constitute a Change in Scope, and an appropriate adjustment of fee shall be negotiated.

The Base Fee is based on the assumption that the supply of raw water for treatment shall be Brownell Springs and Alder Creek. VEOLIA shall accept 500,000 gallons/day of treated water from the City of Portland source, but any additional costs to treat Portland Water or the impacts associated with Portland Water is not covered in this Scope.

C.1.3. VEOLIA shall be responsible for meeting the water treatment performance standards established in Appendix B and C, but shall not be responsible for events not caused by or resulting from VEOLIA's negligent acts or omissions or events outside the reasonable control of VEOLIA, which include but are not limited to:

C.1.3.1. Materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project;

C.1.3.2. Raw water supply is insufficient to meet demand;

C.1.3.3. The demand for water exceeds the design capacity of the facilities specified in Appendix C;

C.1.3.4. Vandalism; and/or

C.1.3.5. Unforeseen Circumstances.

C.1.4. The estimated cost for services under this Agreement is based on an average day demand (ADD) of 1.21 mgd. Any change of ten percent (10%) in the average daily production based upon the prior calendar year (January–December of previous year) will constitute a Change in Scope.

APPENDIX D
LOCATION OF PROJECT

VEOLIA agrees to provide the services necessary for the operation, maintenance, and management of the facilities described herein:

- D.1. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Wastewater Treatment Plant located at:

Wastewater Treatment Plant, 33400 SE Jarl Rd

- D.2. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's WTR Plant located at:

Facility	Address
Alder Creek Water Treatment Plant	52500 Hwy 26
Terra Fern Rd. Reservoir and Pump Station	51515 Terra Fern Dr.
Brownell Springs	48205 SE Dowling Rd.
Sandercock Reservoir	44334 Sandercock Ln.
Vista Loop Rd. Reservoir	41225 SE Vista Loop Dr.
Hudson Road Booster Pump Station	39175 Hudson Road
Revenue Avenue Reservoir and Transfer Station	17160 Revenue Ave.

APPENDIX E
COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

E.1. COMPENSATION

E.1.1. Calculation of Compensation

E.1.1.1. Owner shall pay to VEOLIA as compensation for services performed under this Agreement a Base Fee of **Nine Hundred Forty-Two Thousand Eighty-One Dollars (\$942,081)** for the Wastewater Services and **Two Hundred Twenty-Three Thousand Six Hundred Fifteen Dollars (\$223,615)** for the Water Services for the first year of this Agreement. Subsequent years' base fees shall be determined as specified in Appendix E.3. The Base Fee includes the following cost incurred for the direct or indirect benefit of the Project: expenditures for Project management labor, employee benefits, lab supplies, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities (excluding electricity, which shall be paid by Owner), tools, memberships, training and training supplies. The Base Fee is based on the assumption of treatment at the existing wastewater plant listed in Appendix D.2 and the characteristics listed in Appendix C.1.4. Any limitations on these expenditures as set forth in Appendix E.1.2.

E.1.1.2. The services provided under this Agreement assume overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by Unforeseen Circumstances will be billed to the Owner for reimbursement. All additional expenses for water or wastewater treatment services shall be tracked and invoiced separately.

E.1.2. Limitations

E.1.2.1. The total amount VEOLIA will be required to pay for Major Repairs, Repairs, and Preventative Maintenance will not exceed the annual Repairs Limit of Thirty Thousand (\$30,000.00) for the Wastewater services and Twenty Five Thousand (\$25,000.00) for the Water Services for the contract year identified under Appendix E.1.1 All Major Repairs will be deducted from the Repair Limit for the respective facilities.

E.1.2.2. VEOLIA will bill the Owner for Major Repairs should the Repair Limit for a facility be exceeded prior to the end of the contract year, or otherwise the Owner may choose to complete these repairs. Repairs (including labor) below the \$2,550 limit will be considered incidental to the project and included in the Base Fee. VEOLIA shall provide Owner with a detailed invoice of Repairs over the annual Repairs Limit, and Owner shall pay VEOLIA for all Repairs performed by VEOLIA in excess of such limit. Any loss, damage or injury resulting from Owner's failure to provide for Repairs in excess of the Repairs Limit shall be the sole responsibility of Owner. VEOLIA shall rebate to Owner the entire amount that the cost of Repairs is less than the annual Repairs Limit. VEOLIA will ask for Client consent before any Repair expenditure over \$5,000.00

E.1.2.3. Repairs charged to the Repair Limit shall not include labor costs for VEOLIA personnel assigned to the Project. Repairs charged to the Repairs Limit using

VEOLIA staff not assigned to the Project may include labor costs; provided that VEOLIA obtains Owner consent for such costs, which consent shall not be unreasonably withheld.

- E.1.2.4. The repair or replacement budget shall be used for individual Repairs and Preventative Maintenance on discrete pieces of equipment or process components. Repair expenses related to discrete failure events or separate and unrelated pieces of equipment not required to make a piece of equipment operable may not be aggregated or combined in order to surpass the \$2,000 threshold.
- E.1.2.5. Any loss, damage or injury resulting from VEOLIA's negligence, misconduct negligent maintenance, or violation of this Agreement shall be the sole responsibility of VEOLIA

E.1.3. Changes in Compensation

- E.1.3.1. The Base Fee will be adjusted annually using the Base Fee Adjustment Formula shown in Appendix E.3, with an annual escalation not to go below two percent (2%) or exceed five percent (5%). Upon each contract year renegotiation, VEOLIA shall continue to invoice Owner at the previous amount until written agreement between the Parties as to the new contract year Base Fee, upon which VEOLIA shall issue an invoice retroactively adjusting the previous contract year Base Fee amount
- E.1.3.2. The Parties will negotiate the Repairs Limit each year, three (3) months prior to anniversary of the Effective Date hereof in accordance with Appendix E.1.3.1. Should Owner and VEOLIA fail to agree, the Repairs Limit will be determined by the prior year's Repairs Limit Amount plus application of the Consumer Price Index (CPI) component of the Base Fee Adjustment Formula shown in Appendix E.3.
- E.1.3.3. The Parties will negotiate compensation for Changes in Scope in accordance with Appendix B.

E.2. PAYMENT OF COMPENSATION

- E.2.1. One-twelfth (1/12th) of the Base Fee for the current year and any charges against the repairs limit occurring in the subject month shall be invoiced on the first of the month for each month that services are provided. Repairs will be reconciled quarterly.
- E.2.2. Invoices, (including Repair and Preventative Maintenance expenses and out-of-scope services) for services at the WW Plant shall be identified as such on the invoice. Invoices for Repair and Preventative Maintenance expenses and out-of-scope services shall include a detailed description of work performed and include evidence of any reimbursable expenses in a form reasonably acceptable to the Owner.
- E.2.3. All other compensation to VEOLIA is due on receipt of VEOLIA's invoice and payable within thirty (30) calendar days, unless disputed by Owner.
- E.2.4. All payments due Owner under Section E.1.2 above shall be due and payable within ninety (90) days following the end of the applicable contract year.

- E.2.5. Owner shall pay interest at an annual rate equal to the higher of 8% or other such lower percentage as may be allowed by statute, said amount of interest not to exceed any limitation provided by applicable law, on payments not paid and received within thirty (30) calendar days, such interest being calculated from the due date of the payment.
- E.2.6. In the event of a contested billing, Owner may only withhold the contested portion from payment. The Owner will pay VEOLIA the undisputed portion in accordance with Appendix E.2.3.

E.3. BASE FEE ADJUSTMENT FORMULA

$$ABF = BF \times AF$$

Where:

ABF = Adjusted Base Fee

BF = Base Fee specified in Appendix E.1.1

AF = Adjustment Factor as determined by the formula:

$$[(ECI).70 + (CPI).30]] + 1.02$$

Where:

ECI = The twelve month percent change (from the third quarter of the prior year to the third quarter in the current year) in the Employment Cost Index for Total Compensation for Private Industry Workers in the Pacific Census Division as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU201000000249I.

CPI = The twelve month percent change (from September of the prior year to September of the current year) in the Consumer Price Index for All Urban Consumers: Water and Sewer and trash collection services (CUUR0000SEHG01) but not less than zero (0%).

APPENDIX F
PROJECT VEHICLES AND EQUIPMENT

The Project includes all vehicles, rolling stock, and other equipment as follows:

Year	Make	Model/Description	Equipment/Vehicle ID No.
2009	Ford	F150 4x4 PU	
xxxx	Kubota	R 420 wheel loader	

NEW

APPENDIX G

Public Works Legal Requirements

To the extent that VEOLIA undertakes Repairs or Major Repairs as contemplated in Section 22 of this Agreement, each fully executed task order shall be subject to the following legally required terms (in addition to all other terms and conditions set forth in this Agreement):

1. ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):
 - a. The hourly rate of wage to be paid by VEOLIA or any subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Agreement shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840 for each trade or occupation as defined by the Commissioner of the Oregon Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon available at <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>.
 - b. In order to be effective, each task order shall include the title and date of the applicable prevailing wage publication and the date of any amendment that applies.
 - c. VEOLIA and all subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
 - d. The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
 - e. If VEOLIA or any subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
2. ORS 279C.836 (Public Works Bond Required): VEOLIA shall:
 - a. File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8); and
 - b. Include in every subcontract a provision requiring the subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).
3. ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- a. VEOLIA and every subcontractor shall file certified statements with City in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom VEOLIA or subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Agreement, which certificate and statement shall be verified by the oath of VEOLIA or VEOLIA's surety or subcontractor or subcontractor's surety that VEOLIA and any subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to VEOLIA's or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- b. The certified statement shall be delivered or mailed by VEOLIA or subcontractor to City. Certified statements for each week during which VEOLIA or subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Agreement and in addition to any other retainage required under this Agreement, the City shall retain 25% of any amount earned by VEOLIA until VEOLIA has filed the certified statements with the City as required by this Section. The City will pay the retainage required under this Section within 14 days after VEOLIA files the certified statements required by this Section.
- c. VEOLIA and each subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Agreement.

AGREEMENT
for
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
for the
CITY of SANDY, OREGON

EXISTING

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**AGREEMENT FOR OPERATIONS, MAINTENANCE
AND MANAGEMENT SERVICES**

THIS AGREEMENT is made and entered into this 19th day of December 2018 (the “Effective Date”), by and between the City of Sandy, Oregon whose address for any formal notice is 39250 Pioneer Blvd, Sandy, OR 97055 (“Owner”) and Veolia Water North America-West, LLC (“VEOLIA”), whose address for any formal notice is 700 E Butterfield Rd, Suite 201, Lombard, IL 60148 with a contemporaneous copy to: 53 State Street, 14th Floor, Boston MA 02109, Attn: General Counsel. Owner and VEOLIA are each referred to as a “Party” and are collectively referred to as the “Parties.”

STATEMENT OF PURPOSE

WHEREAS, the Owner owns certain facilities and systems which are further described in Appendix C; and

WHEREAS, Owner desires to contract with VEOLIA to perform certain operation and maintenance services as further described in Appendix B under the terms and conditions set forth in this Agreement.

1. SERVICES AND STANDARD OF PERFORMANCE

- 1.1. Veolia shall, within the design capacity and capability of the Owner’s facilities, perform the services set forth in Appendix B in accordance with applicable law and the requirements set forth in Appendix C.
- 1.2. VEOLIA shall perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services under the same conditions.
- 1.3. VEOLIA shall be responsible for the cost of operation, maintenance and fuel for Owner vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. Training for VEOLIA employees and other such activities are not part of the course and scope of this Agreement and therefore Owner vehicles and equipment should not be used for such matters.

2. OWNER’S RESPONSIBILITIES

- 2.1. Maintain and renew, with respect to all existing portions of the System, warranties, guarantees, easements, permits, authorizations and licenses that have been granted to the Owner, to the extent the maintenance thereof is not a responsibility of VEOLIA hereunder. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or hereinafter acquired by Owner shall remain the exclusive property of Owner unless specifically provided for otherwise in this Agreement.
- 2.2. The Owner shall pay all amounts associated with the occupancy or operation of the Project and the performance of the obligations as listed in Appendix B including, but not limited to, all excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project. Taxes imposed upon VEOLIA’s net income and/or payroll taxes for VEOLIA’s employees are not included.

- 2.3. The Owner shall provide all registrations, licenses and insurance for Owner's vehicles and heavy equipment used in connection with the Project.
- 2.4. The Owner shall provide for VEOLIA's use of all vehicles and equipment currently in use at the Project, including the vehicles described in Appendix F. Such vehicles and equipment shall be in road safe condition. As stated above, VEOLIA shall be responsible for the cost of operation, maintenance and fuel for such vehicles and equipment, unless otherwise agreed to between the parties. Owner shall retain title and ownership of such vehicles and equipment. Use of such vehicles and equipment by VEOLIA shall be limited to duties and use within the course and scope of this Agreement. The parties may supplement this Agreement to provide for an agreed schedule of replacement of such vehicles and equipment and provision of any other insurance coverage deemed necessary or appropriate.
- 2.5. The Owner agrees to not offer employment or other compensation to Project Management and Supervisory personnel of VEOLIA directly working on this Project for a period of two (2) years after the end date of this Agreement or said employee's re-assignment from this Project.
- 2.6. Owner has provided to VEOLIA all data in Owner's possession relating to the Project. VEOLIA will reasonably rely upon the accuracy and completeness of the information provided by the Owner.

3. COMPENSATION AND PAYMENT

Compensation for the services is described in Appendix E.

4. TERM

- 4.1. The initial term of this Agreement shall be for five (5) years commencing on the Commencement Date. Thereafter, this Agreement may be renewed for a term of five (5) years ("Renewal Term") if approved in writing by both parties. If the Parties agree to a Renewal Term, the parties will strive to begin negotiations one hundred eighty (180) days prior to expiration.
- 4.2. Either Party may terminate this Agreement for a material breach of this Agreement by the other Party after giving written notice of the breach and allowing the other Party a reasonable time to correct the breach. Neither Party shall terminate this Agreement without giving the other Party thirty (30) days' written notice of intent to terminate for failure of the other Party to correct the breach within a reasonable time.
- 4.3. Beginning on the first anniversary of the Commencement Date, either Party may terminate this Agreement at its discretion either with or without cause, by giving at least one hundred twenty (120) days prior written notice.
- 4.4. For the initial term of the Agreement only, in the event Owner exercises its rights under Section 4.3 above, Owner shall reimburse Veolia for Veolia's demobilization costs and expenses not to exceed \$20,000 (the "Termination Payment"). If Owner terminates the Agreement under Section 4.3 after the first anniversary of the Commencement Date, Owner will reimburse Veolia up to \$20,000 for actual expenses. If Owner terminates the Agreement under Section 4.3 after the second anniversary of the Commencement Date, Owner will reimburse Veolia up to \$10,000 for actual expenses. There will be no reimbursement if the Owner exercises its rights under Section 4.3 after the third anniversary of the Commencement Date. The Termination Payment will be due on the effective date of termination.

- 4.5. Upon notice of termination by either Party, VEOLIA shall assist Owner in assuming or transferring the operation of the Project. If additional Cost is incurred by VEOLIA at the request of Owner, Owner shall pay VEOLIA such Cost within 30 (thirty) days of invoice receipt. If requested by Owner, VEOLIA will continue to provide the current operations staff for a period of up to ninety (90) days beyond the date of termination for a pro-rated Base fee. If the current staff are not available, VEOLIA will provide an operations staff for a period of up to ninety (90) days beyond the termination for a negotiated fee to include travel, per diem and associated labor costs.
- 4.6. Upon termination of this Agreement and all renewals and extensions of it, VEOLIA will return the Project to Owner in the same condition as it was upon the Commencement Date of this Agreement, ordinary wear and tear and repairs not approved by Owner excepted. If Owner incurs any additional costs associated with returning the Project to the original condition less ordinary wear and tear, VEOLIA shall pay Owner such costs within thirty (30) days of invoice receipt. Equipment and other personal property purchased by VEOLIA for use in the routine operation or maintenance practices of the Project and billed to the Owner in excess of the Base Fee shall become the property of the Owner upon termination of this Agreement, provided that Owner has reimbursed VEOLIA for such equipment and other personal property. However, any equipment or personal property that is purchased by VEOLIA and not billed to the Owner shall be the property of VEOLIA and shall be removed from the Project by VEOLIA at the termination of this Agreement.
- 4.7. Effect of termination. If the Agreement is terminated before the expiration date, Owner will compensate Veolia for work performed up until the effective date of the termination and any payments subject to Sections 4.4 and 4.5.

5. INDEMNITY AND LIABILITY

- 5.1. VEOLIA agrees to indemnify, defend (with counsel reasonably acceptable to Owner) and hold harmless Owner and its officers, officials, employees and agents from and against all liability, loss, damage, expense, costs, including attorney fees, arising out of or associated with VEOLIA's work or duties as described herein, to the extent caused by (1) any willful misconduct, negligent act or omission of VEOLIA, its agents, any of its subcontractors, and anyone directly or indirectly employed by VEOLIA, its agents or its subcontractors, and anyone for whose acts any of them may be liable, (2) the negligent operation of the Project by or under the direction of Veolia, or (3) Veolia's failure to perform its duties under this Agreement, except to the extent caused by the Owner's willful misconduct, negligent act or omission.
- 5.2. It is understood and agreed that, in seeking the services of VEOLIA under this Agreement, Owner is requesting VEOLIA to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of hazardous substances. Therefore, to the fullest extent permitted by law, Owner agrees to hold harmless, indemnify, and defend VEOLIA from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of the negligent acts or omissions, or willful misconduct of VEOLIA, its employees or its subcontractors in the performance of services under this Agreement.
- 5.3. TO THE FULLEST EXTENT OF THE LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL OWNER, VEOLIA, THEIR SUBCONTRACTORS OR THEIR OFFICERS OR EMPLOYEES BE LIABLE TO ANY

OTHER PARTY IN ANY ACTION OR CLAIM FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER SUCH LIABILITY ARISES IN BREACH OF CONTRACT OR WARRANTY, TORT INCLUDING NEGLIGENCE, STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION. ANY PROTECTION AGAINST LIABILITY FOR LOSSES OR DAMAGES AFFORDED ANY INDIVIDUAL OR ENTITY BY THESE TERMS SHALL APPLY WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT, TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY OF ANY PROTECTED INDIVIDUAL OR ENTITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES, WHICH ARE INCONSISTENT WITH THESE TERMS, ARE WAIVED. Veolia's responsibility is to operate the facilities in compliance with current laws and regulations, to the extent of the facility's design, capabilities and physical capacity. It is not part of VEOLIA'S scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations.

- 5.4. TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, VEOLIA'S CUMULATIVE LIABILITY FOR PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION ARISING UNDER THE AGREEMENT (WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY) INCLUDING, BUT NOT LIMITED TO ITS INDEMNITY OBLIGATIONS SPECIFIED IN SECTION 5.1 OF THE AGREEMENT, SHALL NOT EXCEED (1) ANY AVAILABLE AND RECOVERED PROCEEDS FROM INSURANCE REQUIRED BY THIS AGREEMENT UP TO THE SPECIFIED LIMITS (WITHOUT REGARD TO THE AMOUNT OF ANY DEDUCTIBLE WHICH MAY BE APPLICABLE UNDER ANY SUCH POLICY) AND (2) TO THE EXTENT INSURANCE IS NOT APPLICABLE, TEN MILLION (\$10,000,000) FOR THE DURATION OF THE AGREEMENT, PROVIDED THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO ANY LOSSES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF VEOLIA IN BREACH OF VEOLIA'S OBLIGATIONS UNDER THIS AGREEMENT.

6. FINES AND CIVIL PENALTIES

- 6.1. Veolia shall be liable for fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance for reasons resulting from VEOLIA's breach, negligence or willful misconduct during the term of this Agreement. Owner will assist VEOLIA to contest any such fines in administrative proceedings and/or in court prior to any payment by VEOLIA. VEOLIA shall pay the costs of contesting any such fines.
- 6.2. VEOLIA shall not be liable for fines or civil penalties that result from violations that occurred prior to the Commencement Date of this Agreement (unless covered by the existing agreement between the parties) or are otherwise directly related to the ownership of the Project. Any violation that occurred prior to the Commencement Date of this Agreement will be covered by the terms and conditions of the then-existing Agreement between the parties in which time the violation occurred.

6.3. OWNER shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on OWNER and/or Veolia that are not a result of Veolia's breach, negligence or willful misconduct, or are otherwise directly related to the ownership of the Project, and shall indemnify and hold Veolia harmless from the payment of any such fines and/or penalties.

7. INSURANCE

7.1. VEOLIA shall provide the following insurances throughout the term of the Agreement, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:

1. Statutory Worker's Compensation and Employers Liability Insurance as required by the State in which the Project is located.
2. Automobile Liability Insurance with Two Million Dollars (\$2,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of VEOLIA owned or leased motor vehicles, including onsite and offsite operations.
3. Commercial General Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of VEOLIA or any of its employees, or subcontractors.
4. Pollution Liability Insurance with limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate, covering operation of the wastewater treatment facilities only.

7.2. VEOLIA shall add Owner and Owner's elected officials, officers, and employees, as additional insured in VEOLIA's commercial general liability, automobile liability, excess/umbrella, and contractor's pollution liability policies.

7.3. VEOLIA's commercial general liability, automobile liability, employer's liability, excess/umbrella, and contractor's pollution liability policies will be primary and non-contributory to any other coverage available to Owner.

7.4. VEOLIA will provide at least thirty (30) days written notice to Owner prior to any cancellation, non-renewal or adverse material change in coverage required in Section 7 (except ten (10) days' notice for non-payment of premium).

7.5. Owner will maintain the following insurances throughout the term of the Agreement, and shall provide VEOLIA with Certificates of Insurance to demonstrate compliance with this provision:

7.5.1. Property Damage Insurance for all property including Owner supplied vehicles and equipment for the full fair market value of such property. Owner will obtain a waiver of subrogation in favor of Veolia and Veolia's insurers.

7.5.2. Liability Insurance for all motor vehicles and equipment provided by Owner and operated by VEOLIA under this Agreement.

7.6. Certificates of Insurance (“COI”).

7.6.1. The Parties shall provide a COI evidencing the required insurance policies, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 7 and its subsections. COI will reference the project name as identified on the first page of this Agreement.

7.6.2. In the event the COI provided indicates that any required insurance will expire during the period of this Agreement, the party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Agreement and any extension thereafter has been procured and in effect.

7.6.3. In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that party shall provide to the other party, within fifteen (15) days of the policy’s renewal date(s). The party shall furnish the insurance certificates to the other party immediately upon the first party’s receipt.

8. LABOR DISPUTES

In the event activities by Owner’s employee groups or unions causes disruption in VEOLIA’s ability to perform its obligations under this Agreement, Owner, with VEOLIA’s assistance, or VEOLIA at its own option, may seek appropriate injunctive court orders during any such disruption, VEOLIA shall operate the facilities on a best efforts basis until any such disruptions cease, but VEOLIA cannot assure compliance with all contract conditions.

9. UNFORESEEN CIRCUMSTANCES

Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The Party invoking this clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

In the case of Unforeseen Circumstances Owner agrees to pay any undisputed Costs incurred by VEOLIA in connection with the Unforeseen Circumstance. Before payment is made, VEOLIA shall provide the Owner with an itemized list of Costs and explanations. Any disputed costs will be reviewed and negotiated by both parties to determine final payment.

10. ACCESS TO FACILITIES AND PROPERTY

10.1. Owner will make its facilities accessible to VEOLIA as required for VEOLIA’S performance of its services, and will secure access to any other Owner property necessary for performance of VEOLIA’s services.

10.2. VEOLIA shall provide 24-hour per day access to Project for Owner’s personnel. Visits may be made at any time by any of Owner’s employees so designated by Owner’s Representative. Keys for the Project shall be provided to Owner by VEOLIA. All visitors to the Project shall comply with VEOLIA’s operating and safety procedures.

11. CONTRIBUTIONS TO THE INDUSTRIAL ACCIDENT FUND

VEOLIA shall pay all contributions or amounts due the Industrial Accident Fund from VEOLIA incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 2798.220)

12. LIENS AND CLAIMS

VEOLIA shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. (ORS 2798.220)

13. INCOME TAX WITHHOLDING

VEOLIA shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279B.220).

14. INDEPENDENT CONTRACTOR

14.1. VEOLIA is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. As an independent contractor, VEOLIA is not entitled to indemnification by Owner or the provision of a defense by Owner under the terms of ORS 30.285. This acknowledgment by VEOLIA does not affect its independent ability (or the ability of its insurer) to assert the monetary affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

14.2. Worker's Compensation Coverage. VEOLIA hereby certifies that it has qualified for State of Oregon Worker's Compensation coverage either as carrier-insured employer or as a self-insured employer. (ORS 279B.230).

15. MEDICAL CARE FOR EMPLOYEES

VEOLIA shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of VEOLIA's employee(s), all sums which VEOLIA agrees to pay for such services and all monies and sums which Owner collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230).

16. SAFETY AND HEALTH REQUIREMENTS

VEOLIA shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

17. PAYMENT REQUIREMENTS (ORS 2798.220)

VEOLIA shall make payment promptly, as due, to all persons supplying to VEOLIA labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220). If VEOLIA fails, neglects, or refuses to make a prompt payment of any claim for labor or services furnished to VEOLIA or a subcontractor, or by any person in connection with this contract as the claim becomes due, the Owner may pay the claim to the person furnishing the labor or services

and charge the amount of the payment against funds due or to become due to VEOLIA pursuant to this contract. The Owner's payment of a claim under this Section shall not relieve VEOLIA or VEOLIA's surety, if any, from responsibility for those claims.

18. HOURS OF WORK

Veolia shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair Labor Standards Act of 1938 (29 USC §201 et. seq.).

19. CHANGES

Owner and VEOLIA may mutually make changes within the general scope of services of this Agreement. The contract price and schedule will be equitably adjusted pursuant to a written Change Order, Modification or Amendment to the Agreement executed by both parties.

20. NO THIRD PARTY BENEFICIARIES

This Agreement gives no rights or benefits to anyone other than Owner and VEOLIA and has no third party beneficiaries.

21. JURISDICTION

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

22. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

23. AUTHORITY

Both Parties represent and warrant to the other Party that the execution delivery and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing Party below has such authority to bind the Party.

24. NOTICES

All notices shall be in writing and delivered, mailed or e-mailed to each Party at the respective addresses written below. All notices shall be deemed given (i) if delivered personally or by messenger, upon delivery, (ii) if delivered or sent by overnight mail or overnight courier, on the scheduled day of delivery or such earlier time as is confirmed by the receiving Party, (iii) if sent by registered or certified first class mail, upon the sooner of the date on which receipt is acknowledged or the expiration of three (3) days after deposit in United States post office facilities properly addressed with postage prepaid, or (iv) if delivered or sent by e-mail, on the day of transmittal if transmitted during normal business hours or on the next business day if not transmitted during normal business hours. Notice of change of address shall be provided in the same manner, and such change shall not be deemed a modification or amendment to the Agreement.

Owner's Project Manager:
 Mike Walker
 Public Works Director
 39250 Pioneer Blvd.
 Sandy, OR 97055

Veolia's Project Manager:
 Mike Greene, General Manager
 10350 SW Arrowhead Creek Lane
 Wilsonville, Oregon 97070

With Copies To:
 Veolia Water North America-West, LLC
 700 E. Butterfield Road, Suite 201
 Lombard, IL 60148

Veolia Water North America-West, LLC
 Attn: General Counsel
 53 State Street, 14th Floor
 Boston MA 02109

25. RECORDS

VEOLIA agrees that Owner and its authorized representatives shall have access during normal business hours to all books, documents, papers and records that are directly related to the Project for the purpose of making any audit, examination, copies, excerpts and transcripts.

26. WORK IS PROPERTY OF OWNER

All work, including but not limited to documents, drawings, papers, computer programs, photographs, and reports ("Deliverables"), performed or produced by VEOLIA under this Agreement shall be the property of Owner. VEOLIA may retain copies of said documents and materials as desired but will deliver all original materials to Owner upon Owner's written notice. Owner agrees that use of VEOLIA'S completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at Owner's own risk. Except as provided by this Agreement, VEOLIA shall retain ownership of its business records and Owner shall have no right to view or obtain copies of such business records, except pursuant a subpoena lawfully issued by court of competent jurisdiction. Notwithstanding the foregoing, VEOLIA shall retain the right to use the ideas, concepts, know-how, and techniques derived from the rendering of the Deliverables, and VEOLIA shall be entitled to any and all protections afforded under state and federal statutory or common law with respect to any materials that were prepared, developed or used by VEOLIA prior to or outside the scope and course of completing the Services performed under the terms of this Agreement ("VEOLIA Intellectual Property"), and such VEOLIA Intellectual Property shall remain the intellectual property of VEOLIA and shall not be the property of Owner. In the event (and to the extent) that any Deliverable contains any items or elements that are VEOLIA Intellectual Property, VEOLIA grants to Owner an irrevocable, perpetual, royalty-free limited license to use, execute, display and/or perform such to the extent it is necessary to fulfill Owner's purposes under this Agreement.

VEOLIA shall maintain all records and accounts concerning the operation, maintenance and repair of the Project in accordance with generally accepted accounting principles. All such records and accounts shall be retained by VEOLIA and kept accessible for a minimum of three (3) years from the expiration or termination of this Agreement, except as required longer by law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

27. DUTY TO INFORM

VEOLIA shall give prompt written notice to Owner's Project Manager if, at any time during the performance of this Agreement, VEOLIA becomes aware of actual or potential problems, faults or defects in the Project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by Owner. Any delay or failure on the part of Owner to provide a written response to VEOLIA shall constitute neither agreement with nor acquiescence in VEOLIA's statement or claim and shall not constitute a waiver of any of Owner's rights.

28. MEDIATION/TRIAL WITHOUT A JURY

Should any Agreement-related dispute arise between the Parties, which does not involve claims made by or asserted against third parties, and if the dispute cannot be settled through negotiation in good faith, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through non-binding mediation and only in the event said mediation efforts fail, then through litigation.

EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Sandy, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Agreement-related disputes through the mediation process. If a Party requests mediation and the other Party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either Party. The Parties shall retain all rights with respect to any dispute not covered by this Section. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties.

29. ENTIRE AGREEMENT

This Agreement, together with all Appendices attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Appendices. The parties mutually declare there are no oral understandings or promises not contained in the Agreement which contains the complete, integrated, and final agreement between the parties.

Both parties indicate their approval of this Agreement by their signatures below, and each Party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

Veolia Water North America-West, LLC

City of Sandy, Oregon

By: *Keith Oldewurtel*

By: *Kim Yamashita*

Title: Senior Vice President

Title: Kim Yamashita

Name: Keith Oldewurtel

Name: City Manager

EXISTING

APPENDIX A
DEFINITIONS

- A.1. "Adequate Nutrients" means plant influent nitrogen, phosphorous, and iron contents proportional to BODs in the ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts BODs.
- A.2. "Base Fee" means the compensation paid by Owner to VEOLIA for the base services defined in Appendix B of this Agreement for any year of the Agreement. The Base Fee is specified in Appendix E.1 and will be adjusted annually in accordance with Base Fee Formula specified in Appendix E.3. This compensation does not include payments for Requests by Owner that are incidental to or outside the Scope of Services.
- A.3. "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of Owner's NPDES permit. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.4. "BOD" means Biochemical Oxygen Demand over a five (5) day period.
- A.5. "Change in Law" means any of the following acts, events or circumstances to the extent that compliance with the change materially changes the Direct Cost of performing the work: the adoption, amendment, promulgation, issuance, modification, specifically changed by any local, state, federal or other governmental body. VEOLIA and Owner shall negotiate a mutually agreeable change in VEOLIA's Base Fee for any change in law which results in a significant change to the Direct Cost incurred to perform the scope of services. If the change results in a decrease in price, VEOLIA and Owner shall negotiate the change and apply a credit to the Base Fee.
- A.6. "Change in the Scope" are defined in Appendix B.4.
- A.7. "Commencement Date" shall mean March 1, 2019.
- A.8. "Cost" means the total of all Direct Cost and indirect cost determined on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP).
- A.9. "Direct Cost" means the actual cost incurred for the direct benefit of the Project, including but not limited to, expenditures for Project management labor, employee benefits, chemicals, lab suppliers, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools memberships and training supplies
- A.10. "Major Repairs" mean those Repairs that significantly extend equipment or facility service life and cost more than Two Thousand Dollars (\$2,000.00).
- A.11. "Preventive Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or VEOLIA to maximize the service life of the equipment, sewer, vehicles, and facility.

A.12. "Project" means all equipment, vehicles, grounds, and facilities described in Appendix D and where appropriate, the operations, maintenance, and management of such.

A.13. "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle, or facility or some component thereof. However, if the need for the repair is caused by VEOLIA negligent or misuse, such expenditure will not be a "repair" under this agreement, will not be deducted from the Repair Limit and will be VEOLIA's sole responsibility.

Scheduled replacement per manufacturer's recommendations of the following specific consumables shall not be considered Repairs and the cost for same (excluding labor for installation) shall be the responsibility of the City:

- Effluent disc filter media cloth covers
- Ultraviolet disinfection system lamps, ballasts, wipers and sleeves

A.14. "TSS" means total suspended solids.

A.15. "Unforeseen Circumstances" means an event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightening, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war blockade, sabotage, insurrection, riot or civil disturbance or a pandemic event; (ii) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strike or work slowdowns or stoppages by employees of VEOLIA; (iii) the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project; and (iv) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

**APPENDIX B
SCOPE OF SERVICES**

VEOLIA SHALL:

B.1. GENERAL

- B.1.1. Subject to the Maintenance and Repairs Limit, alter as needed, the process and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without Owner's written approval if alteration shall cost in excess of One Thousand Dollars (\$1,000.00).
- B.1.2. Operate, maintain and/or monitor the Project such that the Project is staffed at least Monday through Friday, eight (8) hours per day and a reduced but sufficient number of hours per day (Saturday, Sunday, Holidays) as necessary to meet operational needs. VEOLIA shall be responsive to alarms and emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. VEOLIA shall designate, as a minimum, one staff member as standby to respond to such calls.
- B.1.3. Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement, and where appropriate, the certification requirements mandated by the State.
- B.1.4. Pay all Costs incurred in normal Project operations except as otherwise included in Article 2 - Owner's Responsibilities.
- B.1.5. Perform Preventative Maintenance and Repairs for the Project, subject to the Repairs Limit.
- B.1.6. Maintain aesthetics of the facilities:
- B.1.6.1. In general, maintain the WTP and WWTP site and grounds in a clean, neat, and orderly fashion to present a positive image of the facility and program.
- B.1.6.2. Administrative and other occupied spaces shall be kept clean, dry, and habitable
- B.1.6.3. Other spaces and floors shall be free of sewage, screenings, sludge, debris, etc.
- B.1.6.4. Equipment, tools, and material will be properly stored
- B.1.6.5. Trees and shrubs shall be kept trimmed, grass shall be maintained, and other grounds shall be free of noxious weeds
- B.1.6.6. Maintain plant and site grounds at Hudson Rd. Pump Station and Revenue Ave. Reservoir per the scope of work and schedule in Appendix G. VEOLIA will present a plan for site and ground maintenance by April 1, 2019 with proposed costs. The plan will be agreed upon by both Parties, and the costs shall be billed to Owner in accordance Appendix E.1.1.3.
- B.1.7. Place at each permanently staffed Project facility, a copy of VEOLIA's Corporate Safety Program and provide all employees training specific to this Program, within forty-five (45) days from the Commencement Date of this Agreement. The cost of any capital improvement

required at the Project to bring the facilities within OSHA compliance will be paid by the Owner.

- B.1.8. Provide job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, laboratory, and energy management. All such training shall be fully documented. Where employees are required by law or regulation to hold current licenses, certificates or authority to perform the work required of their respective positions, VEOLIA shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.
- B.1.9. In any emergency affecting the safety of persons or property, VEOLIA shall act without written amendment or change order, at VEOLIA's discretion, to prevent threatened damage, injury or loss; provided however, that VEOLIA shall obtain prior Owner approval for any emergency expenditure in excess of Five Thousand Dollars (\$5,000.00). VEOLIA will notify Owner as soon as reasonably possible and shall be compensated by Owner for any such emergency work notwithstanding the lack of written amendment or change order. VEOLIA will invoice Owner the amount mutually agreed to by the Parties for the emergency expenditure.
- B.1.10. Utilize Owner provided security devices during VEOLIA's hours of operation to protect against any losses resulting from theft, damage or unauthorized use of the Project. Existing security devices include: fencing, lockable structures, and limited intrusion alarm. Upon exiting the Project, VEOLIA shall make sure that all Project gates and structures are locked and that any security alarms are activated.
- B.1.11. Comply with all Federal and OR-OSHA regulations relating to bloodborne pathogens, confined space entry, fall protection, and any other applicable occupational health and safety requirements.
- B.1.12. Review the existing plant emergency action plan and provide an updated plan (if needed).
- B.1.13. VEOLIA shall provide Owner with a listing of any recommended Major Repairs that VEOLIA believes will be required for any of the facilities covered under the contract. Owner may choose to act on these recommendations upon review with Owner's Consulting Engineer. If Owner agrees with any of the recommendations provided, Owner shall attempt to budget for the necessary expenditure(s) in the next regularly scheduled biennial budget preparation cycle. However, VEOLIA shall not be relieved of its responsibilities to perform if the recommendations are not implemented and the City will be responsible for any fines, penalties or regulatory actions or consequences incurred if it can be demonstrated that such occurred as a result of these recommendations not being implemented. If VEOLIA believes the recommendation is necessary to perform its responsibilities and Owner continues to disagree, VEOLIA may terminate the Agreement pursuant to Section 4.3

B.2. WASTEWATER TREATMENT PLANT

- B.2.1. Within the design capacity and capability of the Wastewater Treatment Plant (the "WW Plant"), manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets of the Clean Water Act and the requirements specified in NPDES Permit No. 102492 issued January 23, 2010 (copy attached), and other applicable/related permits issued by EPA, the State or local authorities, unless one or more of the following occurs: (1) WW Plant

influent does not contain Adequate Nutrients to support operation of the WW Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing processes and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in Section 13.12.080 of the Sandy Municipal Code; and (3) the flow, influent biochemical demand (BODs,) and/or total suspended solids (TSS) exceeds the WW Plant's design parameters that exceed the plants Maximum Allowable Headworks Loadings in which case Appendix C specifies responsibilities and remedies.

- B.2.2. Within the design capacity and capability of the WW Plant, operate the WW Plant in a manner such that odor and noise are minimized.
- B.2.3. Operate and maintain effluent filtration and UV disinfection systems. Replace disk filter media and UV system components per manufacturer's schedule
- B.2.4. Operate sodium hypochlorite disinfection system and recycled water pump station during land application season.
- B.2.5. Prepare and submit to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified herein. Veolia shall comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Plant.
- B.2.6. Assist the Owner with the NPDES permit renewal process by providing Project information within VEOLIA's possession and control. Any additional assistance requested by the Owner will be handled as a Change in Scope.
- B.2.7. Operate and maintain, to its design capacity and capability, the solids handling system, including polymer addition and pH adjustment, in compliance with the Bio-Solids handling plan and regulatory requirements.
- B.2.8. Provide hauling and disposal of screenings, grit, scum, sludges (including lime stabilized sludge cake), and biosolids (collectively, "Residuals") to existing disposal sites for land application. The Parties shall negotiate responsibility for additional costs associated with Residual removal due to unexpected loss of available permitted sites, or unforeseen mechanical failures which prohibit removal of solids from the facility to permitted sites. However, Veolia shall be solely responsible for costs that resulted from VEOLIA's negligent actions, inactions, or factors within VEOLIA's control; for example, unavailable truck drivers, repairs not completed in a timely manner, or similar.
- B.2.9. Where land application is used as the method for disposal of biosolids, VEOLIA shall comply with the State and Federal 40 CFR 503 regulations applicable to such method. Specifically, VEOLIA shall assist Owner in securing all permits and land use agreements, and perform soils and biosolids testing, and report the volume and quantity of biosolids land applied. VEOLIA may use the existing Owner secured permits and land application sites.
- B.2.10. Maintain positive working relationships with existing sludge disposal site owners and seek out new sludge disposal sites as needed.

- B.2.11. Provide computerized maintenance, process control and laboratory management systems for the Project and provide a monthly statistical summary of performance to Owner by the tenth (10th) of each month. Owner shall have the right to inspect these records during normal business hours. The maintenance program will include documentation of spare parts inventory. This system shall be capable of providing historical data.
- B.2.12. Perform all laboratory testing and sampling for process control and as currently required by the State and Federal Clean Water Act, NPDES permit NPDES referenced documents and all Federal or State issued permits. Develop, follow and maintain a QAJQC program for laboratory equipment processes and procedures and comply with all OR-OSHA and other applicable laboratory and chemical safe handling requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.
- B.2.13. Provide and document all Preventive Maintenance for the WW Plant. Owner shall have the right to inspect these records during normal business hours.
- B.2.14. Provide and document Repairs for the WW Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.
- B.2.15. Monitor wastewater pump station alarms reported to the WWTP SCADA computer and auto-dialer and convey this information to Owner personnel immediately. Owner and VEOLIA will develop a more detailed protocol for reporting and conveying this information after execution of the contract.
- B.2.16. Owner will be responsible for all power costs at the Wastewater Treatment Plant during the term of the Agreement. VEOLIA will be responsible for all other utility costs, (telephone, SCADA circuits, satellite internet) at the facility. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities. Solid waste disposal (trash and bar screenings) are collected by the Owner's solid waste franchisee at no cost to the project.

B.3. WATER TREATMENT PLANT

- B.3.1. Within the design capacity and capability of the Water Treatment Plant (WTR Plant), manage, operate, and maintain the WTR Plant, as set forth in this Section B.3.1, so that finished water discharged from the WTR Plant meets the requirements specified by the State of Oregon and U.S. EPA for Public Water Systems and National Primary Water Treatment Regulations as required by the Safe Drinking Water Act and as outlined in Appendix C.
- B.3.1.1. For raw water sourced from Portland Water Bureau:

- Operate and maintain booster pumps;
- Set booster pump start/stop setpoints; and
- Operate and maintain Revenue Avenue transfer pumps including start/stop setpoints.

Operation and maintenance of the chemical feed system and the carbon filter stream is not included as part of the scope, and will be negotiated by the Parties at a later date.

B.3.1.2. For the Alder Creek Water Treatment Plant:

- Operate and maintain diversion dam and intake screens. Seasonally remove or install splash boards as necessary to provide positive suction head at raw water booster pump station;
- Operate and maintain raw water booster pump station and variable frequency drives;
- Operate and maintain streaming current monitors and chemical mixing and feed system.
- Operate and maintain clarifiers and filters; and
- Operate and maintain finished water pumps and set pump start/stop setpoints to maintain reservoir levels and adequate filter backwash water supply;
- Operate and maintain the on-site diesel generator, including all expendables (fuel, oil, etc.). Perform load bank testing at least bi-annually. This includes the diesel generator at the Terra Fern reservoir and pump station.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

B.3.1.3. For Brownell Springs:

- Operate and maintain chemical feed equipment;
- Maintain disinfectant inventory at the site by safely transporting and transferring small quantities of disinfectant to the site; and
- Maintain plant equipment, building and components.

Maintenance of the underground piping of any diameter at this site will be performed by the Owner

B.3.1.4. For Hudson Road Booster Pump Station and Revenue Ave. Transfer Pump Station:

- Operate and maintain the on-site diesel generator, including all expendables, (fuel, oil, etc.) at the Hudson Rd. site and the natural gas generator at Revenue Ave. site including all expendables. Perform load bank testing at least biannually. Owner will be responsible for natural gas service at the Revenue Ave. site.
- Maintenance of the underground piping of any diameter at this site will be performed by the Owner

B.3.1.5. VEOLIA shall be responsible for meeting potable water quality limitations established therein unless the raw water supply contains substances, materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the WTR Plant.

B.3.2. Assist the Owner with the disposal of Residuals to permitted disposal sites. Any Cost of this service due to permitting requirements, increased or unusual quantities of material, or increases in landfill rates, hauling costs, or tipping fees shall constitute a change in scope and give cause for an adjustment in fee. Owner and VEOLIA agree that Owner is the Generator of the Residuals.

B.3.3. Perform all laboratory testing and sampling currently required by the State and Federal Safe Drinking Water Regulations at the entry point and upstream as shown in Appendix V. Develop, follow and maintain a QA/QC program for laboratory equipment process and procedures. Comply with OR-OSHA and all applicable laboratory and chemical handling safety requirements. Additional laboratory testing and sampling requested by the Owner will be provided on a fee per test basis to be determined at the time of the request.

B.3.4. Provide and document all Preventive Maintenance for the WTR Plant. Owner shall have the right to inspect these records during normal business hours.

B.3.5. Provide and document Repairs for the WTR Plant. The Repairs Limit described in Appendix E shall not include the salary cost of VEOLIA's onsite personnel assigned to the project making such repair. However, due to the size, complexity, technical nature, or timing for completion of such repairs, VEOLIA may subcontract or provide VEOLIA personnel outside of the project to make such repairs and charge such services to the Repairs budget. VEOLIA will provide Owner with a monthly report on the expenditures of Repairs.

B.3.6. Provide and document Repairs for the WTR Plant in a mutually-agreed format by the tenth (10th) day of each month.

B.3.7. Provide monthly water production, peak day and regulatory compliance data by source in a mutually-agreed format by the tenth (10th) day of each month.

B.3.8. Owner will be responsible for all power costs at the Water Treatment Plant and associated sites during the term of the Agreement. VEOLIA will be responsible for all other utility costs, (telephone, SCADA circuits, satellite internet, solid waste disposal) at the facility. The master water and wastewater SCADA computer is located at the water treatment plant and telephone lines are used for communications between the facilities

B.4. SCOPE CHANGES

- B.4.1. A Change in Scope of services shall occur when and as VEOLIA's costs of providing services under this Agreement change as a result of:
- B.4.1.1. Any change in Project operations, personnel qualifications, required certification, staffing or other cost which is a result of an Unforeseen Circumstance. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs.
 - B.4.1.2. The current WWTP NPDES permit is being renewed. Any change in Project operations, personnel qualifications, required certification, staffing or other cost as a result of the issuance of new Permit or permit renewal shall constitute a Change in Scope. Increases or decreases of not less than ten percent (10%) in the Wastewater Plant influent flow or loadings, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Commencement Date of this Agreement. The Parties must mutually agree upon compensation for the Changes in Scope.
 - B.4.1.3. Increases or decreases of not less than ten percent (10%) in the Water Plant average daily production, as set forth in Appendix C, as demonstrated by a twelve month floating average compared to the twelve month period ending on the Commencement Date of this Agreement. VEOLIA will invoice Owner the amount mutually agreed to by the Parties. The undisputed invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs. Owner's request of VEOLIA, and VEOLIA's consent, to provide additional services. Owner and VEOLIA shall negotiate an increase in VEOLIA's Base Fee for these Changes in Scope
- B.4.2. At any time, the Owner may request VEOLIA to provide support services for Owner's capital projects. In this case VEOLIA shall propose a scope of services, schedule and budget identifying direct costs and overhead/profit charges. VEOLIA shall not proceed with any such capital project services without express written authorization of Owner.

**APPENDIX C
CAPACITY AND CHARACTERISTICS**

C.1. CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT

C.1.1. Wastewater Treatment Plant Design Capacity is described as follows:

Parameter	Plant
Flow, million gallons/day	1.25
BODs, pounds per day	2,220
TSS, pounds per day	2,330
Daily Peaking Factor	2.0

All parameters shall be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow. VEOLIA will measure and update actual Plant Design Capacity within ninety (90) days of the Commencement Date and provide Owner in writing with any changes to this Section C.1.1.

C.1.2. In the event any one of the Project influent characteristics, suspended solids, BODs, or flow, exceeds the design parameters stated above, VEOLIA shall take commercially reasonable efforts to return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters By:</u>	<u>Recovery Period Maximum</u>
10% or Less	5 days
Above 10% Less than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VEOLIA will have a thirty (30)-day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.1.3. VEOLIA shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period. Notwithstanding anything to the contrary, Owner retains all liability, fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

C.1.4. The Base Fee for services under this Agreement is based on the following Project influent characteristics as determined by a 12 month average (January- December of previous year):

Parameter	Plant
Avg flow, million gallons/day	1.62
BODs, pounds per day	2,362
TSS, pounds per day	2,289

C.2. RAW WATER QUALITY AND FINISHED WATER REQUIREMENTS OF WATER TREATMENT PLANT

C.2.1. The facilities shall be operated and maintained in accordance with all applicable federal, state and local regulations pertaining to water treatment, contaminant monitoring, and reporting. All analytical methods used to demonstrate compliance shall be in accordance with methods approved by the Owner and State Agencies, as applicable. In the event the parameter does not have a method approved by Federal and State Agencies, VEOLIA will utilize alternate test methods approved by EPA in 40 CFR, 141, Subpart C.

C.2.2. System Demand

VEOLIA shall assume an average day demand (ADD) for water of 1.098 mgd and a peak daily demand of 1.79 mgd at the commencement of this agreement. VEOLIA acknowledges that the Owner has the right to demand up to 3.5 mgd (including 0.5 mgd from the Portland Water Bureau source) on any day and VEOLIA shall undertake, as and when needed, the necessary arrangements to assure that sufficient personnel are available to satisfy additional demand overtime. If Owner communicates any changes in the average daily demand for water as listed above, this will constitute a Change in Scope, and an appropriate adjustment of fee shall be negotiated.

The Base Fee is based on the assumption that the supply of raw water for treatment shall be Brownell Springs and Alder Creek. VEOLIA shall accept 500,000 gallons/day of treated water from the City of Portland source, but any additional costs to treat Portland Water or the impacts associated with Portland Water is not covered in this Scope.

C.2.3. VEOLIA shall be responsible for meeting the water treatment performance standards established in Appendix B and C, but shall not be responsible for events outside the control of VEOLIA, which include but are not limited to:

- C.2.3.1. Materials or liquids contained in the raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project;
- C.2.3.2. Raw water supply is insufficient to meet demand;
- C.2.3.3. The demand for water exceeds the design capacity of the facilities specified in Appendix C;
- C.2.3.4. Vandalism; and/or
- C.2.3.5. Unforeseen Circumstances.

C.2.4. The estimated cost for services under this Agreement is based on an average day demand (ADD) of 1.098 mgd. Any change of ten percent (10%) in the average daily production based upon the prior calendar year (January–December of previous year) will constitute a Change in Scope.

Temporary increases in water production necessitated by equipment failure or to recover low reservoir levels shall not be included in these calculations.

**APPENDIX D
LOCATION OF PROJECT**

VEOLIA agrees to provide the services necessary for the operation, maintenance, and management of the facilities described herein:

- D.1. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Wastewater Treatment Plant located at:

Wastewater Treatment Plant, 33400 SE Jarl Rd

- D.2. All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's Water Treatment Plant located at:

Facility	Address
Alder Creek Water Treatment Plant	52500 Hwy 26
Terra Fern Rd. Reservoir and Pump Station	51515 Terra Fern Dr.
Brownell Springs	48205 SE Dowling Rd.
Sandercock Reservoir	44334 Sandercock Ln.
Vista Loop Rd. Reservoir	41225 SE Vista Loop Dr.
Hudson Road Booster Pump Station	39175 Hudson Road
Revenue Avenue Reservoir and Transfer Station	17160 Revenue Ave.

APPENDIX E
COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

E.1. COMPENSATION

E.1.1. Calculation of Compensation

- E.1.1.1. Owner shall pay to VEOLIA as compensation for services performed under this Agreement a Base Fee of **Five Hundred Fifty-Four Thousand Three Hundred Seventy-Six Dollars (\$554,376)** for the Wastewater Services and **One Hundred Eighty-Two Thousand Nine Hundred Twenty-Two Dollars (\$182,922)** for the Water Services for the first year of this Agreement. Subsequent years' base fees shall be determined as specified in Appendix E.3. The Base Fee includes the following cost incurred for the direct or indirect benefit of the Project: expenditures for Project management labor, employee benefits, chemicals, lab supplies, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities (excluding electricity, which shall be paid by Owner), tools, memberships, training and training supplies. The Base Fee is based on the assumption of treatment at the existing wastewater plant listed in Appendix D.2 and the characteristics listed in Appendix C.1.4. Any limitations on these expenditures as set forth in Appendix E.1.2.
- E.1.1.2. Owner expects to commence construction of an expansion to the existing WWTP during the term of this agreement. Owner will involve and consult with VEOLIA operations staff during planning and design of the new facilities. Additional labor or other costs attributable to construction of new WWTP facilities can be expected. Owner and VEOLIA will negotiate a Change in Scope for any additional services or expenses resulting from construction. Once a new wastewater plant has been constructed and completed acceptance testing and is online, the Parties agree to renegotiate the Base Fee.
- E.1.1.3. The services provided under this Agreement assume overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by Unforeseen Circumstances will be billed to the Owner for reimbursement. All additional expenses for water or wastewater treatment services shall be tracked and invoiced separately.

E.1.2. Limitations

- E.1.2.1. The total amount VEOLIA will be required to pay for Repairs and Maintenance will not exceed the annual Repairs Limit of Thirty Thousand (\$30,000.00) for the Wastewater services and Twenty Five Thousand (\$25,000.00) for the Water Services for the contract year identified under Appendix E.1.1 All repairs over \$2,000.00 will be deducted from the Repair Limit for the respective facilities.
- E.1.2.2. VEOLIA will bill the Owner for repairs over \$2,000 should the Repair Limit for a facility be exceeded prior to the end of the contract year or the Owner may choose to complete these repairs. Repairs (including labor) below the \$2,000 limit will be considered incidental to the project and included in the Base Fee. VEOLIA shall provide Owner with a detailed invoice of Repairs over the annual Repairs Limit,

and Owner shall pay VEOLIA for all Repairs performed by VEOLIA in excess of such limit. Any loss, damage or injury resulting from Owner's failure to provide for Repairs in excess of the Repairs Limit shall be the sole responsibility of Owner. VEOLIA shall rebate to Owner the entire amount that the cost of Repairs is less than the annual Repairs Limit. VEOLIA will ask for Client consent before any Repair expenditure over \$5,000.00

- E.1.2.3. Repairs charged to the Repair Limit shall not include labor costs for VEOLIA personnel assigned to the Sandy project. Repairs charged to the Repairs Limit using VEOLIA staff not assigned to the Sandy project may include labor costs.
- E.1.2.4. The repair or replacement budget shall be used for individual repairs on discrete pieces of equipment or process components. Repair expenses related to discrete failure events or separate and unrelated pieces of equipment not required to make a piece of equipment operable may not be aggregated or combined in order to surpass the \$2,000 threshold.
- E.1.2.5. Any loss, damage or injury resulting from VEOLIA's negligence, misconduct or negligent maintenance shall be the sole responsibility of VEOLIA
- E.1.3. Changes in Compensation
 - E.1.3.1. The Base Fee will be adjusted annually using the Base Fee Adjustment Formula shown in Appendix E.3, with an annual escalation not to go below two percent (2%) or exceed five percent (5%). Upon each contract year renegotiation, VEOLIA shall continue to invoice Owner at the previous amount until written agreement between the Parties as to the new contract year Base Fee, upon which VEOLIA shall issue an invoice retroactively adjusting the previous contract year Base Fee amount
 - E.1.3.2. The Parties will negotiate the Repairs Limit each year, three (3) months prior to anniversary of the Commencement Date hereof in accordance with Appendix E.1.3.1. Should Owner and VEOLIA fail to agree, the Repairs Limit will be determined by the prior year's Repairs Limit Amount plus application of the Consumer Price Index (CPI) component of the Base Fee Adjustment Formula shown in Appendix E.3.
 - E.1.3.3. The Parties will negotiate compensation for Changes in Scope in accordance with Appendix B.

E.2. PAYMENT OF COMPENSATION

- E.2.1. One-twelfth (1/12th) of the Base Fee for the current year and any charges against the repairs limit occurring in the subject month be invoiced on the first of the month for each month that services are provided. Repairs will be reconciled quarterly.
- E.2.2. Invoices, (including repairs expenses and out-of-scope services) for services at the Plant shall be identified as such on the invoice. Invoices, (including repairs expenses, and out-of-scope services) for services at the WTR Plant shall be identified as such on the invoice.

- E.2.3. All other compensation to VEOLIA is due on receipt of VEOLIA's invoice and payable within thirty (30) calendar days, unless disputed by Owner.
- E.2.4. All payments due Owner under Section E.1.2 above shall be due and payable within ninety (90) days following the end of the applicable contract year.
- E.2.5. Owner shall pay interest at an annual rate equal to 8% or such other percentage as may be allowed by statute, said amount of interest not to exceed any limitation provided by law, on payments not paid and received within thirty (30) calendar days, such interest being calculated from the due date of the payment.
- E.2.6. In the event of a contested billing, Owner may only withhold the contested portion from payment. The Owner will pay Veolia the undisputed portion in accordance with Appendix E.2.2.

E.3. BASE FEE ADJUSTMENT FORMULA

$$ABF = BF \times AF$$

Where:

ABF = Adjusted Base Fee

BF = Base Fee specified in Appendix E.1.1

AF = Adjustment Factor as determined by the formula:

$$[((ECI).70 + (CPI).30))] + 1.02$$

Where:

ECI = The twelve month percent change (from the third quarter of the prior year to the third quarter in the current year) in the Employment Cost Index for Total Compensation for Private Industry Workers in the Pacific Census Division as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU201000000249I.

CPI = The twelve month percent change (from September of the prior year to September of the current year) in the Consumer Price Index for All Urban Consumers: Water and Sewer and trash collection services (CUUR0000SEHG01) but not less than zero (0%).

APPENDIX F
PROJECT VEHICLES AND EQUIPMENT

The Project includes all vehicles, rolling stock, and other equipment as follows:

Year	Make	Model/Description	Equipment/Vehicle ID No.
2002	Ford	1/2T 4x4 PU	
1994	Ford	C-9000 sludge spreader	
xxxx	Kubota	R 420 wheel loader	

EXISTING

Appendix G

HUDSON ROAD BPS AND REVENUE AVE. TPS LANDSCAPE MAINTENANCE REQUIREMENTS AND SPECIFICATION

SECTION A - SUMMARY

1. Contractor shall furnish all labor, tools, material and equipment required to maintain landscaped areas per the following sections during the term of the Agreement.
2. Contractor shall determine the number and frequency of visits required to maintain the landscaping per the specifications. It is assumed that the frequency of visits will vary depending on the season.
3. Project areas are shown on the attached landscape plans. Each site plans shows the tree, plant and shrub species on the sites. There is an irrigation plan for the Revenue Ave. site but not for the Hudson Rd. site. Manuals for the irrigation systems and irrigation programs are available at each site.

SECTION B - HERBICIDE PROGRAM

1. All herbicides shall be applied by or under the supervision of a currently licensed herbicide applicator. Notify the City of herbicide application type and schedule prior to seasonal application. Submit a record of rates, quantities and types applied conforming to Federal, State and Local regulations and submit copy to City.

SECTION C - PRODUCTS

Fertilizer, when required shall be Webfoot Organic deluxe 10-10-5 or Webfoot 5-15-10 cottonseed meal based fertilizer.

SECTION D - EXECUTION

Fertilizing trees: Fertilize individual trees or shrubs located outside of planting beds on an as-needed basis based on tree/shrub vigor or appearance.

Weeding: Planting beds are shown on the landscape sheets. Maintain clean, weed-free planting beds by pulling and removing all weeds from beds. Check beds for weeds at each scheduled mowing and during all other visits. Dispose of weeds removed off-site in an approved manner.

Weed other areas at each site per Section 6.

Pruning: Prune to shape plantings as needed or to conform to the natural growth patterns of each species. Remove all dead and diseased wood from the plantings.

Mulching: Maintain a two-inch mulch of sterile, commercial garden mulch (no

bark dust) on planting beds at all times. This includes the areas on both sides of the access drive outside the gate at the Revenue Ave. site. First application of new mulch shall be on or before April 1st of even-numbered contract years thereafter. Rake existing mulch in spring before applying new cover in order to break "crust" of old mulch.

NOTE: The access drive and parking areas at the Revenue Ave. and Hudson Rd. sites are made of permeable asphalt. No materials (mulch, sand, topsoil, etc.) may spilled, placed or stored on this surface.

Spraying: Spraying shall only be performed by a currently licensed applicator.

Watering: Per specified irrigation program. One-inch per week is sufficient during the growing season on established plantings. For areas watered with drip irrigation adjust watering as needed to maintain a one-inch per week equivalent. Contractor is encouraged to suggest changes to the irrigation schedule in order to conserve water and maintain landscape health. Review any changes to irrigation schedule with City prior to implementation.

Winterize irrigation system no later than November 1st of each year (earlier if threat of freezing weather exists) and start up irrigation system by June 1st (earlier if unusually warm or dry weather exists) of each year.

Debris, clippings and trimmings: Remove all debris, clippings and trimmings from weeding, pruning and general clean-up operations and dispose of in a legal manner off-site.

Dead or dying plant materials: Notify City of any damaged, dead or dying plant materials.

Field Grass / Low Wildflower Mix Maintenance

Field Grass / Low Wildflower Mix areas are identified on the landscape plan. The seed mix at the Hudson Rd. site consists of Pro-Time PT 706 mix. The seed mix at the Revenue Ave. site consists of Pro-Time PT 710 mix. Neither site requires mowing however, cutting with a weed eater or string trimmer during the growing season is necessary when the height is greater than 6" - 8". Typically, this is twice annually, once in the spring and once again in June or July.

Selectively apply herbicide weed control by a licensed applicator sufficient to control invasive broadleaf weeds and grasses. Employ hand weeding methods where herbicide application would damage wildflowers or grasses.

Utilize clean, sharpened cutting equipment, free of bacteria, fungus, chemicals, etc. prior to use on project site. Collect clippings from cutting operations and dispose of in a legal manner off-site.

Water Quality Facility Area

The Revenue Ave. site includes a water quality facility approximately 500 sq. ft.

in area. Do not mow water quality facility areas. Trim/prune native plants, sedges groundcover and grasses as needed. Do not apply herbicides in water quality facility areas. Remove weeds by hand only. Apply mulch as necessary until groundcover has filled in the pond side slopes.

Keep area around pond inlet and outlet piping clear.

Monitor runoff conditions in water quality facility; notify City of drainage or erosion problems.

Access Drive and Parking Areas

The access drive and parking areas at the Revenue Ave. and Hudson Rd. sites are made of permeable asphalt. No materials (mulch, sand, topsoil, etc.) may spilled, placed or stored on this surface.

Police and sweep pedestrian walkways after mowing and during leaf season to maintain clean, safe surfaces, remove accumulated clippings and plant debris from walkways and entrances. Clean any paved surfaces soiled by landscape maintenance operations.

Weed Eradication

Weed eradication shall include eradication by herbicide and non-herbicide methods (hand-pulling, mechanical cutting, etc.). Weed eradication program shall include but is not limited to the following noxious species:

Cirsium arvense (Canadian Thistle)
 Convolvulus spp. (Morning Glory)
 Cytisus scoparius (Scots Broom)
 Dipsacus sylvestris (Common Teasel)
 Eichornia crassipes (Water Hyacinth)
 Festuca arundinaceae (Tall Fescue)
 Hedera helix (English Ivy)
 Holcus lanatus (Velvet Grass)
 Lolium spp. (Rye Grasses)
 Lotus corniculatus (Bird's Foot Trefoil)
 Lythrium salicaria (Purple Loose Strife)
 Melilotus spp. (Sweet Clover)
 Myriophyllum spicatum (Eurasian Milfoil)
 Phalaris arundinaceae (Reed Canary Grass)
 Rubus discolor (Himalayan Blackberry)
 Solanum spp. (Nightshade)
 Trifolium spp. (Clovers)
 Vicia spp. (Vetches)

Herbicide application shall be by manual 'spot spraying', wicking, or backpack methods per manufacturer's specifications. Herbicide use in waterways or swale areas shall be subject to approval by City and be strictly applied per manufacturer's recommendations.

Selective hand removal by non-herbicide methods shall be utilized if herbicide application threatens native plantings. All native plantings damaged by herbicide application shall be replaced immediately at no cost to City.
Protect the site and waterways at all times from erosion and siltation.

Irrigation System Inspection and Maintenance

The Contractor shall irrigate to maintain all plantings in a healthy, thriving condition.

Start irrigation when plants require supplemental water due to dry weather during the active growing season.

Flush and winterize system by November 1st of each year or earlier if weather exhibits threat of freezing. Verify that system is free of water in all components subject to freeze damage.

City will be responsible for backflow device testing on the irrigation systems at each site.

Adjust nozzles, heads, emitters and valves to provide consistent water application avoiding over or under-watering throughout native planting areas. Contractor is encouraged to suggest changes to the irrigation schedule in order to conserve water and maintain landscape health. Changes to irrigation system schedule must be reviewed and approved by City.

Notify City of irrigation system problems that cannot be addressed by adjustment or replacement of heads or emitters.

-----End Specification Section-----

PLANT LIST

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	SPACING	QUANTITY
EV	EVERGREEN TREES				
FR	FRASER FIR	FRASER FIR	6'-8" B&B	10' OC	16
LY	LEWIS AND CLARK CYPRESS	LEWIS AND CLARK CYPRESS	6'-8" B&B	10' OC	17
PS	PSUEDOTSUGA MENZIESII	DOUGLAS-FIR	10'-12" B&B	20' OC	17
EX	EXCELSA RED CEDAR	EXCELSA RED CEDAR	6'-8" B&B	8' OC	19
WA	WATSONG CEDAR	WATSONG CEDAR	6'-8" B&B	8' OC	27
HE	WESTERN HEMLOCK	WESTERN HEMLOCK	10'-12" B&B	20' OC	11
VM	VINE MAPLE (CLUMP)	VINE MAPLE (CLUMP)	5 OC	AS SHOWN	14
BM	BIGLEAF MAPLE	BIGLEAF MAPLE	5 OC	AS SHOWN	6
GV	GREEN ARBOR VITAE	GREEN ARBOR VITAE	5'-8" B&B	3' OC	28
GR	GOLDEN ARBOR VITAE	GOLDEN ARBOR VITAE	5'-8" B&B	5' OC	54
CR	CRINKLE-LEAF CREEPER	CRINKLE-LEAF CREEPER	4" POT	36" OC	1,000
EC	ECLAWN	ECLAWN			
SE	SEED MIX A - ECLAWN	SEED MIX A - ECLAWN			
SM	SUNSHINE "FOX PLUS" MIX	SUNSHINE "FOX PLUS" MIX			
SE	SEED AT A RATE OF 100 LBS/ACRE	SEED AT A RATE OF 100 LBS/ACRE			
SE	SEED MIX B - EROSION CONTROL	SEED MIX B - EROSION CONTROL			
SE	"REGEN" - STERILE WINTER WHEAT	"REGEN" - STERILE WINTER WHEAT			
SE	SEED AT A RATE OF 90 LBS/ACRE	SEED AT A RATE OF 90 LBS/ACRE			
ET	EXISTING TREES TO REMAIN	EXISTING TREES TO REMAIN			
EX	EXISTING TREES TO BE REMOVED	EXISTING TREES TO BE REMOVED			

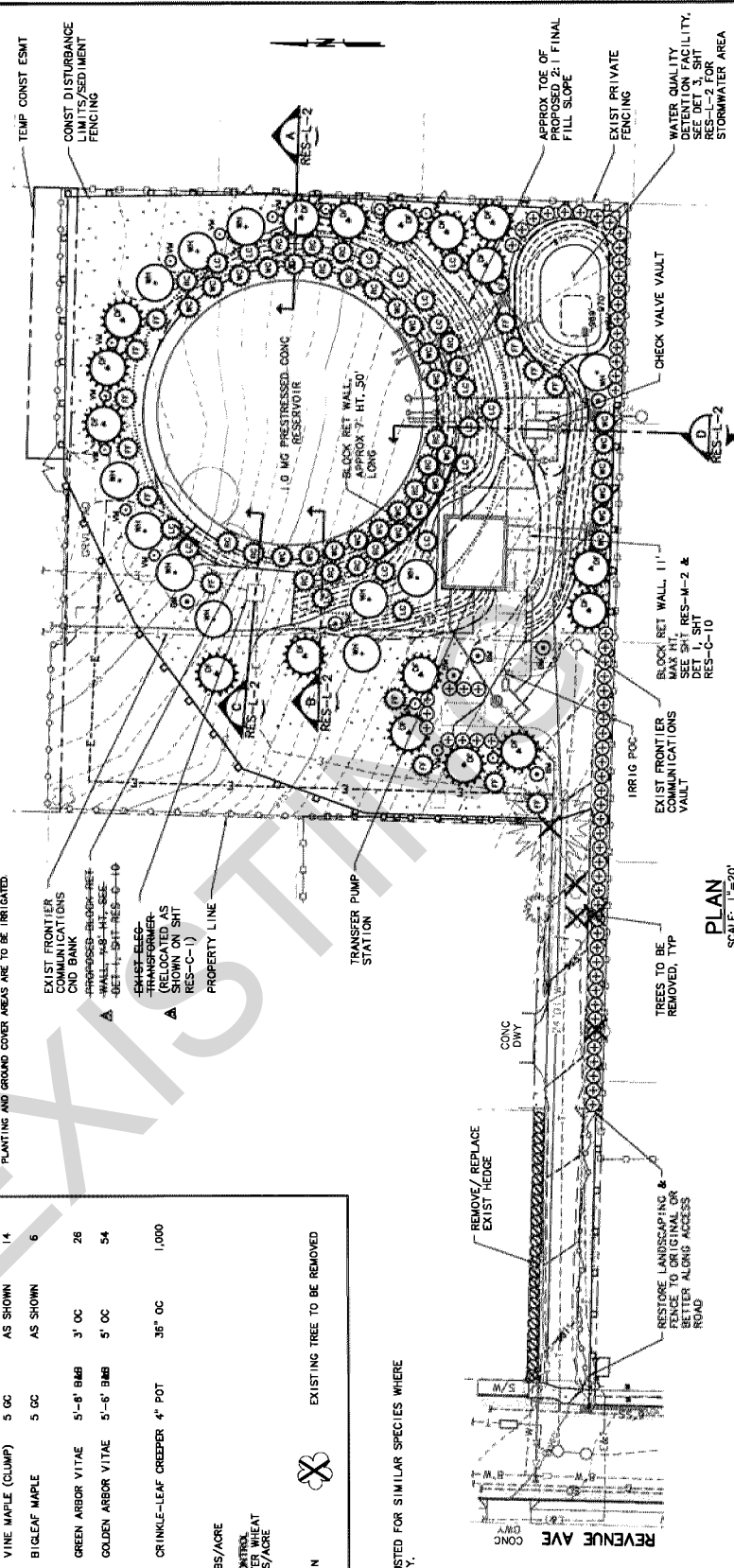
NOTE: LANDSCAPING WAS ADJUSTED FOR SIMILAR SPECIES WHERE REQUIRED DUE TO AVAILABILITY.

NOTES

- LANDSCAPE SITE WORK:**
- REMOVE EXISTING TREES PERMITTED TO REMAIN FROM ALL CONSTRUCTION OPERATIONS. DO NOT BROADCAST LIGN, FILL, OR OTHER USE DISTURB THE AREA WITHIN THE DRILLPIE OF TREES TO BE PRESERVED.
 - STOCKPILED TOPSOIL IS AVAILABLE FOR USE IN LANDSCAPE WORK SURGRADE SOIL NOT ACCEPTABLE FOR USE IN PLANT PITS OR BEDS.
 - JUTE MATTING TO BE INSTALLED ON ALL SLOPES 2:1 AND STEEPER.
 - SEED MIX B (SEE WINTER WHEAT) TO BE INSTALLED IN ADDITION TO PLANTING AND SEEDING COVER. SEPARATE JUTE MATTING STRANDS TO PLANT GROUND COVER.
- IRRIGATION:**
- DESIGN, PROVIDE, AND INSTALL AUTOMATIC IRRIGATION SYSTEM TO MEET INDUSTRY STANDARDS. SUBMIT PROPOSED SYSTEM LAYOUT TO ENGINEER AND OWNER FOR REVIEW.
 - VERIFY CONDITIONS AND DIMENSIONS PRIOR TO STARTING WORK. NOTIFY ENGINEER OF CONDITIONS THAT ARE A HINDRANCE TO COMPLETING THE WORK.
 - MAKE NECESSARY ADJUSTMENTS AND PROVISIONS FOR SLOPE CONDITIONS SO SYSTEM PERFORMS OPTIMALLY. ALL IRRIGATION PLANTING AND GROUND COVER ARE TO BE IRRIGATED.

PLANTING

- CHECK AND CONFIRM PLANT MATERIAL QUANTITIES. NO SUBSTITUTIONS WILL BE ALLOWED. CONTRACTOR TO SECURE AVAILABILITY OF PLANT MATERIALS SIX MONTHS PRIOR TO COMMENCEMENT OF WORK.
- PLANT TREES AND SHRUBS IN LOCATIONS SHOWN SPACED TO COMPLETELY FILL BEDS WITH THE QUANTITIES INDICATED IN THE PLANT LIST. RETAIN ALL LABELS ON PLANT MATERIAL UNTIL FINAL ACCEPTANCE.
- A WYDORRIZATE ADDITIVE IS REQUIRED FOR ALL SEEDING AND PLANTING.
- 60% CONIFER TREES PLANTED ON SLOPES AS SHOWN IN DETAIL.
- ALL TREES AND SHRUBS TO BE INSTALLED WITH GUARDS AS DETERMINED TO PROTECT FROM DAMAGE. GUARDS TO BE INSTALLED PRIOR TO PLANTING. GUARDS OR WIRE SCREENS WITH TIME FASTENERS SHALL BE INSTALLED PRIOR TO PLANTING. GUARDS OR WIRE SCREENS WITH TIME FASTENERS SHALL BE INSTALLED PRIOR TO PLANTING.
- MULCH ALL NEW PLANTING BEDS AND MINIMUM 24-INCH DIAMETER AROUND EACH TREE WITH 3" DEPTH COMPOSTED GARDEN MULCH PRODUCT BARK CHIPS OR BARK DUST ARE NOT ACCEPTABLE.
- GUARANTEE GERMINATION OF SEED PRIOR TO OCTOBER 1. PREFERRED PLANTING SEASONS ARE MARCH 15 TO JUNE 1 AND SEPTEMBER 15 TO NOVEMBER 1.
- PLANT MATERIAL WILL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD AND GUARANTEED AFTER COMPLETION OF THE PROJECT FOR A PERIOD OF 2 YEARS.



PLANTING

CITY OF SANDY
PWB INTERMEDIATE PROJECT
SCHEDULE B
1.0 MG RESERVOIR AND
TRANSFER PUMP STATION

RES-L-1

PROJECT NO. 11-1285 SCALE: AS SHOWN DATE: NOVEMBER 2012

MSA
Murray Smith & Associates, Inc.
Engineers/Planners

ED: S.K. SHAW, P.E. REG. NO. 10000
 PR: J.E. SHAW, P.E. REG. NO. 10000
 PER: J.E. SHAW, P.E. REG. NO. 10000
 TEL: 303-555-1000
 FAX: 303-555-1000

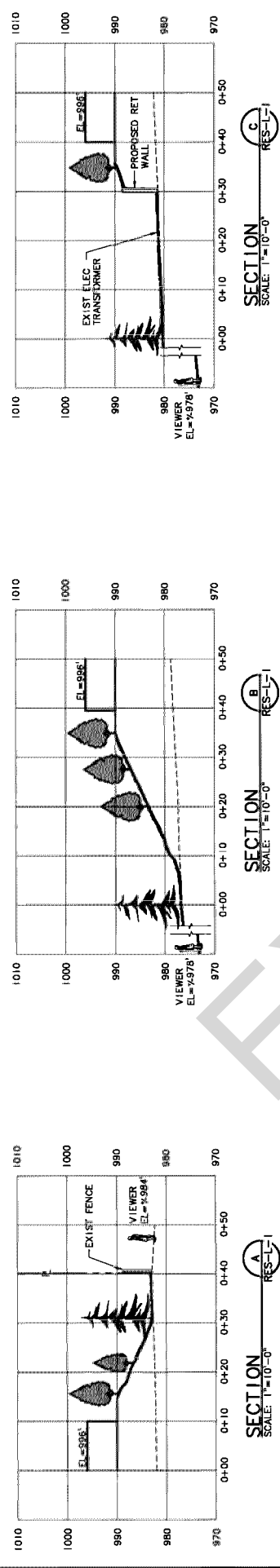
RECORD DRAWING
 SEE DISCLAIMER
 SHEET 1
 VERSION 4.1
 12-9-97

REVISIONS

NO.	DATE	BY	REVISION

DESIGNED: []
 CHECKED: []
 DRAWN: []
 DATE: []

NOTICE: IF THIS DRAWING IS USED FOR ANY OTHER PROJECT, THE USER ASSUMES ALL LIABILITY. THIS DRAWING IS NOT TO SCALE.



SECTION A
SCALE: 1"=10'-0"
RES-L-1

SECTION B
SCALE: 1"=10'-0"
RES-L-1

SECTION C
SCALE: 1"=10'-0"
RES-L-1

SECTION D
SCALE: 1"=10'-0"
RES-L-1

WATER QUALITY BASIN

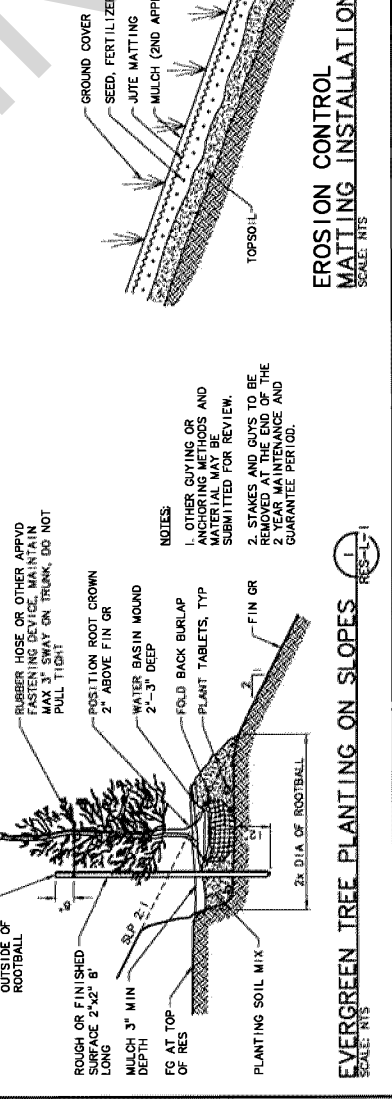
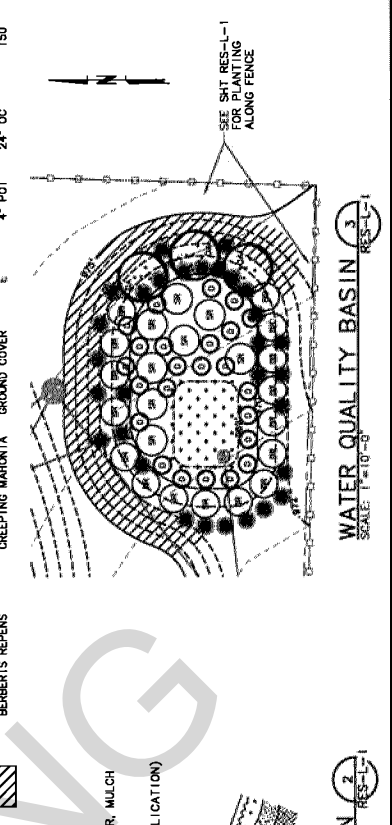
1. PROVIDE A 4" DEPTH OF COMPACTING MEDIUM MEETING SPECIFICATIONS IN CITY OF PORTLAND STORMWATER MANUAL OR EQUAL PARTS SAND/LIUM/2-WAY COMPOST WITH DO NOT COMPACT.

2. SUBMIT GROWING MEDIUM SAMPLE, SUPPLIER, SOURCE AND ANALYSIS INFORMATION FOR APPROVAL PRIOR TO DELIVERY.

3. GROUP PLANTS IN CLUSTERS LOCATE PLANTS WITHIN SPECIFIED MOISTURE ZONE.

PLANT LIST

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PLANT TYPE	DIVERSITY FACTOR	SIZE	SPACING	QUANTITY
BR	ZONE A - WET TO MOIST BOTTOM						
BR	ROSSA PISODARPA	SWAMP ROSE	SHRUB	E	1' GC	6' OC	8
BR	CORNUS SERICEA	RED TWIG DOGWOOD	SHRUB	D	1' GC	4' OC	24
BR	DESCHAMPSIA CAESPITOSA	TUFTED HAIRGRASS	FORB	E	4" POT	1' OC	77
BR	JUNCUS ENSIFOLIUS	DANGERLEAF RUSH	RUSH	E	4" POT	1' OC	77
BR	ZONE B - MODERATELY MOIST TO DRY SIDE SLOPES						
BR	FRAXINUS LATIFOLIA	OREGON ASH	TREE	D	1" CAL	AS SHOWN	3
BR	POLYSTICHUM MUNITUM	SWAMP FERN	FERN	E	1' GC	4' OC	30
BR	ROSA GYMNOCARPA	BALDHIP ROSE	SMALL SHRUB	E	1' GC	6' OC	16
BR	BERBERIS REPENS	CREeping MAHONIA	GROUND COVER	E	4" POT	24" OC	150



EROSION CONTROL MATTING INSTALLATION
SCALE: 1"=10'-0"
RES-L-1

NOTES:
1. OTHER GUYING OR ANCHORING METHODS AND SUBMITTED FOR REVIEW.
2. STAKES AND GUYS TO BE REMOVED AT THE END OF THE GUARANTEE PERIOD.

EVERGREEN TREE PLANTING ON SLOPES
SCALE: 1"=10'-0"
RES-L-1

NOTICE: IF THIS BAR DOES NOT MATCH THE DRAWING, IT IS NOT TO SCALE.

REVISION:

NO.	DATE	BY	REVISION
1	06/14	JPF	RECORD DRAWING
2	11/26/13	DAM	ADDENDUM 2

DESIGNED: JPF
DRAWN: JPF
CHECKED: JPF

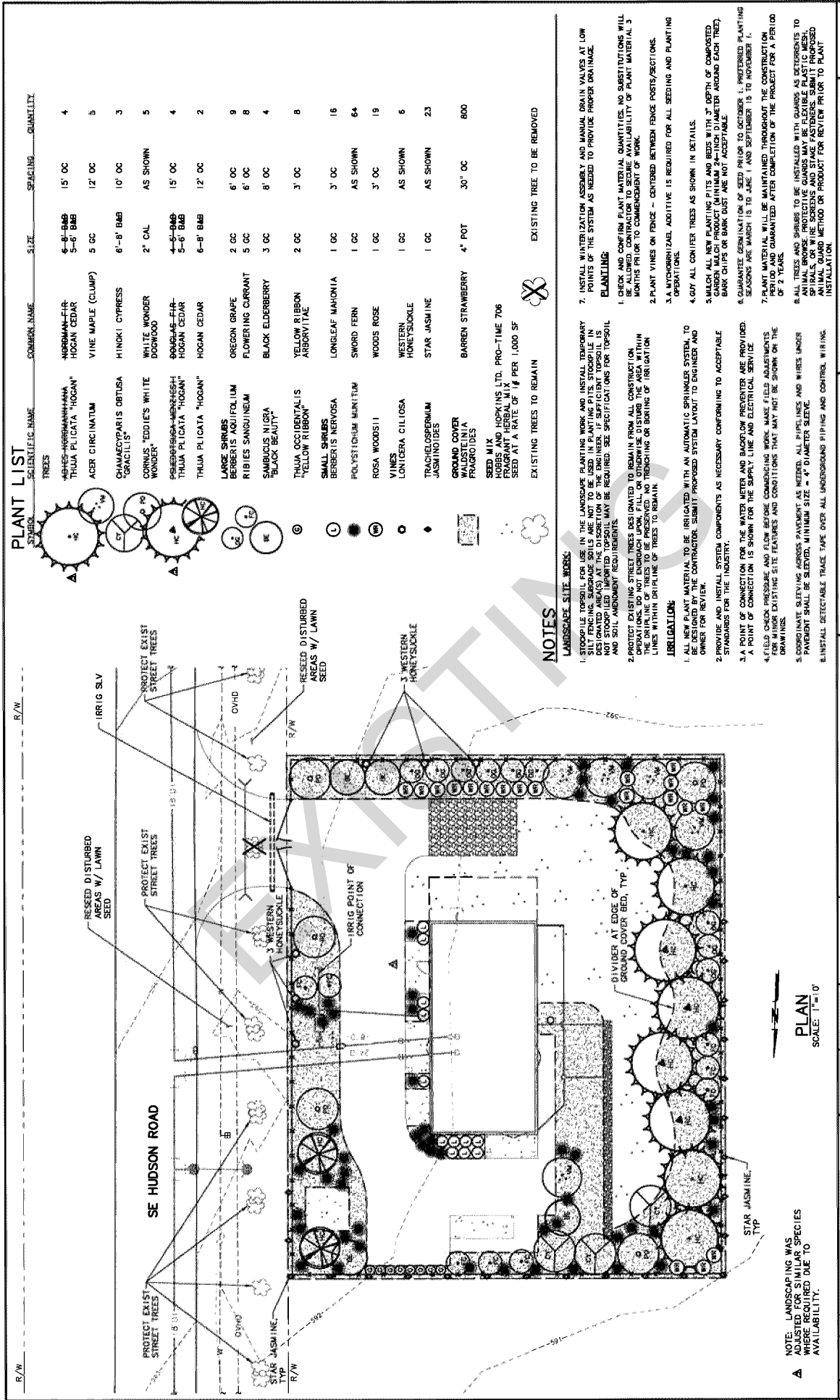
RECORD DRAWING
SEE DISCUSSION SHEET 1, VERSION 4.1
12-9-97

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CITY OF SANDY PWB INTERTIE PROJECT SCHEDULE B 1.0 MG RESERVOIR AND TRANSFER PUMP STATION

RESERVOR SITE LANDSCAPING SECTIONS AND DETAILS
RES-L-2

NOVEMBER 2013



PLANT LIST

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	SPACING	QUANTITY
⊙	THUJA OCCIDENTALIS "YELLOW RIBBON"	YELLOW RIBBON ARBORVITAE	2 OC	3' OC	8
⊙	SMALL SHRUBS BERBERIS NERVOSA	LONGLEAF MANIKIA	1 OC	3' OC	16
⊙	POLYSTICHUM MUNITUM	SWORD FERN	1 OC	AS SHOWN	64
⊙	ROSA WOODSII	WOODS ROSE	1 OC	3' OC	19
⊙	VINES LONICERA CILLOSA	WESTERN HONEYSUCKLE	1 OC	AS SHOWN	6
⊙	TRACHELOSPERMUM JASMINOIDES	STAR JASMINE	1 OC	AS SHOWN	23
⊙	GROUND COVER WALDSTEINIA FRAGROIDES	BARREN STRAWBERRY	4" POT	30" OC	800
⊙	SEED MIX HOBBS AND HOPKINS LTD. PRO-TIME 706 FRAGRANT HERBAL MIX SEED AT A RATE OF 1# PER 1,000 SF	EXISTING TREES TO REMAIN			

- ### NOTES
- LANDSCAPE SITE WORKS:**
1. STOCKPILE TOPSOIL FOR USE IN THE LANDSCAPE PLANTING WORK AND INSTALL TEMPORARY SILT FENCING. SUBGRADE SOILS ARE NOT TO BE USED IN PLANTING PITS. STOCKPILE IN DESIGNATED AREAS AT THE DISCRETION OF THE ENGINEER. IF SUFFICIENT TOPSOIL IS NOT AVAILABLE, SOIL AMENDMENT MAY BE REQUIRED. SEE SPECIFICATIONS FOR TOPSOIL AND SOIL AMENDMENT REQUIREMENTS.
 2. PROTECT EXISTING STREET TREES. TREES DESIGNED TO REMAIN FROM ALL CONSTRUCTION OPERATIONS TO NOT ENCROACH UPON, FILL, OR OTHERWISE DISTURB THE AREA WITHIN LINES WITHIN DRIPLINE OF TREES TO REMAIN.
- IRRIGATION:**
1. ALL NEW PLANT MATERIAL TO BE IRRIGATED WITH AN AUTOMATIC SPRINKLER SYSTEM, TO BE DESIGNED BY THE CONTRACTOR. SUBMIT PROPOSED SYSTEM LAYOUT TO ENGINEER AND OWNER FOR REVIEW.
 2. PROVIDE AND INSTALL SYSTEM COMPONENTS AS NECESSARY CONFORMING TO ACCEPTABLE STANDARDS FOR THE INDUSTRY.
 3. A POINT OF CONNECTION FOR THE WATER METER AND BACKFLOW PREVENTER ARE PROVIDED. A POINT OF CONNECTION IS SHOWN FOR THE SUPPLY LINE AND ELECTRICAL SERVICE.
 4. FIELD CHECK PRESSURE AND FLOW BEFORE COMMENCING WORK. MAKE FIELD ADJUSTMENTS FOR MINOR EXISTING SITE FEATURES AND CONDITIONS THAT MAY NOT BE SHOWN ON THE DRAWINGS.
 5. CONDUIT SLEEVING ADDRESS PAVEMENT AS NEEDED. ALL PIPELINES AND WIRES UNDER PAVEMENT SHALL BE SLEEVED, MINIMUM SIZE = 4" DIAMETER SLEEVE.
 6. INSTALL DETECTABLE TRADE TAPE OVER ALL UNDERGROUND PIPING AND CONTROL WIRING.
- PLANTING:**
1. CHECK AND CONFIRM PLANT MATERIAL QUANTITIES. NO SUBSTITUTIONS WILL BE ALLOWED WITHOUT THE APPROVAL OF THE ENGINEER. VERIFY QUALITY OF PLANT MATERIAL 3 MONTHS PRIOR TO COMMENCEMENT OF WORK.
 2. PLANT VINES ON FENCE - CENTERED BETWEEN FENCE POSTS/SECTIONS.
 3. A MYCORRHIZAL ADDITIVE IS REQUIRED FOR ALL SEEDING AND PLANTING OPERATIONS.
 4. GUY ALL CENTER TREES AS SHOWN IN DETAILS.
 5. MULCH ALL NEW PLANTING PITS AND BEDS WITH 3" DEPTH OF COMPOSTED GARDEN MULCH PRODUCT (MINIMUM 3/4" INCH DIAMETER AROUND EACH TREE). BARK CHIPS OR BARK DUST ARE NOT ACCEPTABLE.
 6. GUARANTEE GERMINATION OF SEED PRIOR TO OCTOBER 1. PREFERRED PLANTING SEASONS ARE MARCH 15 TO JUNE 1 AND SEPTEMBER 15 TO NOVEMBER 1.
 7. PLANT MATERIAL WILL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD AND GUARANTEED AFTER COMPLETION OF THE PROJECT FOR A PERIOD OF 2 YEARS.
 8. ALL TREES AND SHRUBS TO BE INSTALLED WITH GUARDS AS DETAILMENTS TO PROTECT FROM DAMAGE. GUARDS SHALL BE INSTALLED WITH GUARD STRAPS. GUARD STRAPS OR WIRE SCREENS AND STAKE FASTENERS SHALL BE INSTALLED. ANIMAL GUARD METHOD OR PRODUCT FOR REVIEW PRIOR TO PLANT INSTALLATION.
- EXISTING TREE TO BE REMOVED

SHEET	BOOSTER PUMP STATION PLANTING PLAN	BPS-L-1	NOVEMBER 2012
CITY OF SANDY PWB INTERTIE PROJECT SCHEDULE C BOOSTER PUMP STATION		PROJECT NO. 11-1285 SCALE AS SHOWN DATE NOVEMBER 2012	
 Murray Smith & Associates, Inc. Engineers/Planners 101 N. 1st Avenue, Suite 800 Portland, Oregon 97201 TEL 503-252-4622		MSA RECORD DRAWING SEE DISCLAIMER, SHEET 1, VERSION 4.1 12-9-07	
SO DESIGNED BY: [Signature] DATE: [Date] CHECKED BY: [Signature] DATE: [Date]		NOTICE: IF THE BAR DOES NOT MATCH THE DRAWING, NOT TO SCALE.	
NOTE: LANDSCAPING WAS ADJUSTED FOR SIMILAR SPECIES WHERE REQUIRED DUE TO AVAILABILITY.		REVISIONS:	



STAFF REPORT

Item # 5.

Meeting Type: City Council Meeting
Meeting Date: 12/16/2024
From: Gregory Brewster
Subject: SandyNet Master Plan Presentation

DECISION TO BE MADE:

None at this time. This is an opportunity to discuss the proposed SandyNet Telecommunications Master Plan and provide any feedback.

PURPOSE / OBJECTIVE:

SandyNet has been operating under an existing master plan, which was adopted in 2009, prior to fiber optic being installed throughout the city. As SandyNet recognizes 10 years of serving fiber-to-the-home (FTTH) to Sandy's city limits, the goals under the existing 2009 master plan have long been executed or have been otherwise rendered obsolete.

At the direction of City Council, Staff hired a consultant to assist in assessing and preparing a master plan for the SandyNet department to help guide the utility for years to come. The result is a comprehensive document that includes the status of the department, a direction for ensuring sustainability, as well as a rate and staffing analysis.

Adoption of a new master plan will provide a forward-looking path for SandyNet for at least the next ten years. Staff has already identified four to five items that it could begin immediately implementing.

BACKGROUND / CONTEXT:

On November 19th, 2001, Sandy City Council adopted an ordinance establishing SandyNet. Since that time SandyNet has provided the community, including businesses with broadband service. Originally using copper telephone lines, DSL was provided through 2009, which largely replaced with a wireless system that blanketed Sandy with Wi-Fi. The existing master plan was adopted in 2009, when wireless service was still expanding, and the fiber footprint consisted of only a handful of buildings in the downtown district.

With the rise of internet-based video streaming from YouTube and Netflix, SandyNet's wireless system experienced more demand than it could serve. In order to meet rising broadband requirements, fiber optic service to each home and business was determined to be a viable solution. In 2014, fiber optic construction started, which passed 100% of homes by the end of 2015. In 2017 the Urban Renewal District was constructed using urban renewal funds to build out fiber to businesses.

To date, SandyNet services 80% of homes within Sandy city limits with fiber. Additionally, fiber is available to 95% of businesses within city limits. With the recent completion of the 2022 SandyNet American Rescue Plan Act Project, apartments and other rental complexes were built out with fiber to close the remaining service gaps within city limits. While some private properties and apartment complexes do not have fiber, any complex that has given SandyNet permission to construct fiber has been built out.

Finally, SandyNet has worked with Clackamas County's Broadband eXchange (CBX) to create a public-public partnership that has helped build out fiber to rural sections of the Sandy community, outside of city limits.

All these milestones and more have been implemented under the active 2009 Telecommunications Master Plan, which contains little to no language regarding most of the goals and projects that have been implemented. While SandyNet recognizes 10 years as being a fiber operator, the department is faced with both challenges and opportunities in its effort to support the Sandy community.

Funding, staffing levels, regulatory changes and future plans and structure are all considerations that the new master plan aims to address. Rural Innovative Strategies Inc. (RISI) was awarded the project to assess and write SandyNet's new master plan. RISI performed comprehensive interviews with key stakeholders and took an in depth look at SandyNet financial outlook and cost model to create recommendations that help keep SandyNet in line with the community's expectations and make SandyNet a sustainable utility that can be self sufficient for years to come.

KEY CONSIDERATIONS / ANALYSIS:

RISI will be presenting the master plan in detail, however there are a few items that the SandyNet Advisory Board recommended that Staff clarify or mention prior to the presentation.

Under Section 3.2, SandyNet staff have been looking at how the department can move out of its existing facilities. Should the opportunity to build or purchase a new site, Staff believes that there can be cost savings by combining the new building with a redundant data center.

Under Sections 4 and 5, any of the recommendations mentioned in the document are not required to be executed immediately, or in combination with one another. The master plan speaks to actions and recommendations, but largely leaves the implementation strategy to Council to determine. Staff would like to note that in some instances, a phased/staggered implementation may be ideal, and each goal should be assessed outside of the master plan adoption to ensure that a proper and effective implementation plan is in place.

Under Section 7, most regulatory requirements are mandated, and SandyNet has begun resolving the identified/outstanding issues. Items under section 7 are currently identified regulatory requirements, which are subject to change in the future as the regulatory landscape continues to evolve. Therefore, specification about specific item level compliance or noncompliance status is omitted from the report.

Upon adoption, SandyNet will immediately begin restructuring its budget process to include electronics and physical asset replacement schedules. All equations utilizing the old rate model will be updated, for the upcoming 2025-2027 budget cycle.

RECOMMENDATION:

The SandyNet Master Plan was reviewed and endorsed by the SandyNet Advisory Board on November 21st, 2024.

Staff respectfully requests that Council review the master plan, RISI's presentation, and Staff's considerations, and provide feedback on the draft SandyNet Master Plan.

LIST OF ATTACHMENTS / EXHIBITS:

- SandyNet Master Plan
- RISI Presentation Slides

SandyNet Master Plan

November 2024



Prepared By



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1. Executive Summary

It is difficult to overstate SandyNet's excellence in the context of municipal ISPs, and ISPs in general. SandyNet provides superb customer service, fast and reliable speeds, and all at some of the lowest costs to customers in the country. SandyNet is an asset that any community in the US would covet, and is poised to strengthen the economic and quality of life of the Sandy Community for decades to come.

Under the surface, however, SandyNet is facing some challenges that are common to ISPs of its current size – challenges that this plan seeks to address. And it must first be said that these are not challenges to be afraid of, nor challenges that should be seen as indictments of SandyNet's management or trajectory until this point. These are solvable challenges that can be mitigated while still maintaining SandyNet's position as one of the most affordable ISPs in the nation delivering exceptional service to the community.

SandyNet has approximately 4,000 subscribers, and growing to 4,000+ subscribers is a challenging initial hurdle for small ISPs for two primary reasons.

First, it requires building a full management team (which is a significant expense) while the total customers are still relatively small. Adding customers from this point on will provide linear revenue growth, while only incurring incremental additional costs, because SandyNet will be able to spread its fixed operational costs over more subscribers.

Second, initial ISP growth often requires utilizing significant capital from outside sources (most often in the form of debt) rather than from internal revenues. ISPs then have to manage those debt service obligations at a more precarious scale. Once ISPs grow beyond 4,000 customers, revenues can increase more substantially as the ISPs leverage more scale. This in turn provides ISPs with more flexibility and cushion on their balance sheets.

SandyNet's current challenges are a particular manifestation of those commonly faced by similarly scaled ISPs. SandyNet has achieved its growth with a significantly leaner staffing model than peer ISPs – which has in turn allowed SandyNet to charge prices that are *significantly* lower than their competitors and peer ISPs. While the staffing shortcuts have enabled incredibly low prices, which in turn have generated sky-high penetration rates within the community, the current staffing levels are not sustainable. Instead, there is significant operational risk due to burnout, turnover, and lack of capability resiliency. At a time when hiring in telecom is perhaps the hardest it has ever been, turnover now could significantly impact network operations and therefore service quality.

In addition, the current pricing structure does not allow SandyNet to adequately address some longer term network asset and operational needs, such as fully accounting for asset depreciation, and building in some best-practices aspects of network resiliency (namely, a redundant telecom data center, known in the telecom industry as a central office).

While it is difficult, in general, for ISPs to persist for long periods of time at 2,000 or 3,000 subscribers, it is completely possible for an ISP to have a long-term, sustainable business around 4,000 subscribers – just not at the current rates SandyNet is offering. The staffing structure and the asset depreciation challenges are both critical enough that this plan strongly recommends that SandyNet raise its rates to account for these two foundational operational needs. This recommendation was not made lightly. A close review of SandyNet’s operations led to the clear conclusion that SandyNet’s rates are, essentially, artificially low, which is introducing unnecessary risks to the business.

We hope this plan serves as a roadmap for SandyNet through this inflection point in their size, and conveys simultaneously that SandyNet is not in an unstable or dangerous position currently. Instead, we recommend that significant changes and growth should be pursued to make the organization more resilient, ease staffing burdens, and protect SandyNet for the decades to come.

A summary of recommendations in this plan are as follows:

1. Better account for asset depreciation of network assets by assuming a seven year replacement cycle on network electronics, and 30 year replacement cycle on fiber. Doing so suggests that SandyNet should be setting aside approximately \$550,000/year.

2. Strengthen the relationship between SandyNet and its advisory board by formalizing reporting structures, goals, and success metrics, to allow the board to provide more rigorous strategic guidance. A stronger relationship will provide more value and guidance to SandyNet leadership through this process of maturing its operations, staff, accounting, and strategy.

3. Mitigate risks of staff burnout, turnover, and lack of redundancy by increasing staff capacity. Section four of this plan provides specific recommendations for staff to add, roles to differentiate, and that SandyNet establishes stronger recruiting pipelines with regional training programs.

4. Adjust SandyNet’s rates to increase the Average Revenue Per User (ARPU) by \$12/month. This is the threshold estimated to be needed to properly mitigate the critical risks identified in this report.

5. Consider consolidating debt to a 30 year revenue bond, which is standard for municipal ISPs. Given SandyNet is a stable municipal utility, debt consolidation into a debt vehicle that aligns with the life of fiber and minimizes monthly payments could be a strategic way to give the ISP more cushion in year to year finances and enable organizational investments such as updated facilities for network redundancy and updated office space

6. Pursue customer growth in a structured way outside of Sandy in partnership with CBX or by building using SandyNet backed construction. Scaling beyond 4,000 customers would allow the ISP to spread its fixed costs over more subscribers, strengthen its financial position, and bring more resources into the City of Sandy. This plan provides an analysis of both of these growth philosophies, and considerations and strategies that should be employed while pursuing each.

2. SandyNet’s finances are stable but the enterprise does not generate adequate surplus for long term needs after accounting for debt service payments

Because the recommendations throughout this plan have to be made within the context of the financial health of the SandyNet, this strategic plan begins with a quick summary of the current state of the health of the enterprise.

SandyNet is currently in an acceptable financial position for the near term, generating a modest surplus after current operational expenses and debt service payments.

SandyNet’s budgeted operational costs of approximately \$1.8M/year are very lean – particularly due to the smaller staff size compared to similar ISPs. (See section 4 for a deeper analysis of SandyNet staffing).

On the debt side, SandyNet’s debt is spread across a revenue bond acquired in 2015 and interdepartmental loans from the City. The enterprise is approximately halfway through repayment of the 20 year, \$7.5M revenue bond, with annual payments slated to be approximately \$620,000-\$690,000 for the remainder of the term. SandyNet’s wastewater interfund loan has been fully paid off, and it has retired a little more than half of a transit interfund loan, with a remaining balance of slightly over \$200,000.

On the revenue front, SandyNet has some of the lowest rates of broadband in the country, which has created a loyal base of customers in the city of Sandy, where penetration rates are around 80%. Penetration rates for SandyNet are exceptionally high and likely among the highest for any ISP in the country.

Revenue growth is projected to be modest, as it is unlikely that significantly more customers will subscribe to the network given penetration rates are already so high. Some growth is being achieved through SandyNet’s partnership with Clackamas Broadband Exchange (CBX), but this partnership does not currently cover a significant number of new homes and businesses.

All told, SandyNet’s revenue covers current operational costs and debt service, but does not leave significant if any surplus after payments. This is a stable position from which to operate for the near term, but acting on the strategic changes recommended in this plan – which are essential to ensure the long-term strength and health of the enterprise – will require making adjustments to the rate structure and pursuing additional customer growth.

In addition to exploring options to increase revenue described in later sections, SandyNet may wish to reduce debt pressure and free additional funds in the short term by considering options to refinancing its bond from a 20 year term to a 30 year term. This would allow the enterprise to take a longer term financial view, as is typical for a municipal ISP, and leverage stability and relative predictability of the

revenue bond system. SandyNet should engage with the City's finance department and its advisory board to discuss refinancing options.

3. SandyNet should more formally account for network depreciation costs – and budget for a telecom data center upgrade

SandyNet should allocate funds to ensure network resiliency. In particular, SandyNet should prioritize covering expenses related to depreciation, as well as possible future expenditures to harden the network and add redundant facilities.

3.1 SandyNet must account for asset depreciation to ensure continued high quality service

To ensure that SandyNet can continue to provide high quality service, it needs to plan and account for asset depreciation. Depreciation is the gradual decrease in value of network infrastructure and equipment over time due to wear and technological obsolescence. Proper depreciation planning is foundational to best practice ISP operations, and ensures that funds are available to replace aging equipment and maintain service quality. SandNet leadership previously planned and budgeted for equipment replacement costs, but funding was allocated in favor of other operational priorities, such as network expansion.

Going forward, SandyNet should annually funnel revenue into a depreciation fund to cover both its network electronics and fiber optics assets. It should conservatively assume a seven-year service life for network electronics, which is industry standard, though the actual service life may be longer for some of the components. The total estimated cost of electronics in SandyNet's network is \$2.7M. Therefore, using a straight line depreciation schedule, SandyNet should set aside approximately \$386,000 annually for electronics depreciation.

Fiber optic cable is conservatively rated by manufacturers to have a 20 year service life, but in practice lasts much longer. ISPs often assume a depreciation cycle of 30 years on fiber assets (and fiber made within the last 10 years may last more than 30 years). Replacement costs for fiber will be variable based on when the construction occurs, but ISPs can use a rough estimate of \$60,000 per mile for planning purposes. SandyNet's network consists of about 80 miles of fiber, making the total estimated value of fiber assets (including construction costs) approximately \$4.8M. Therefore SandyNet should set aside approximately \$160,000 replacement annually in the depreciation fund.

SandyNet's total yearly target of approximately \$546,000 for their depreciation fund must also scale proportionally with any expansion or upgrades that add to the value of the network.

3.2 SandyNet should consider adding another telecom data center to increase resilience

Establishing a new, redundant, telecom data center (referred to as a central office, or CO, in the telecom industry) for network equipment would increase network resiliency, and should be understood as another demand for additional operational revenue.

Stakeholders interviewed for this plan repeatedly noted that the current location of SandyNet's central office is suboptimal from a network security standpoint and presents a vulnerability as a single point of failure.

Of course, building another central office would be a considerable expense. SandyNet could start planning with a baseline budget of \$500,000 for the facility based on industry averages, not including site acquisition costs. However, network resiliency and security is a major area of concern for ISPs, and mature ISPs all endeavor to have more resiliency by establishing a second CO. Additionally, as SandyNet continues to grow, updated or expanded office space and facilities for personnel will likely become more desirable. If SandyNet chooses to prioritize exploring the feasibility of a new CO, it should consider the possibility of combining the construction with other planned City developments to capture construction efficiencies and lower overall costs.

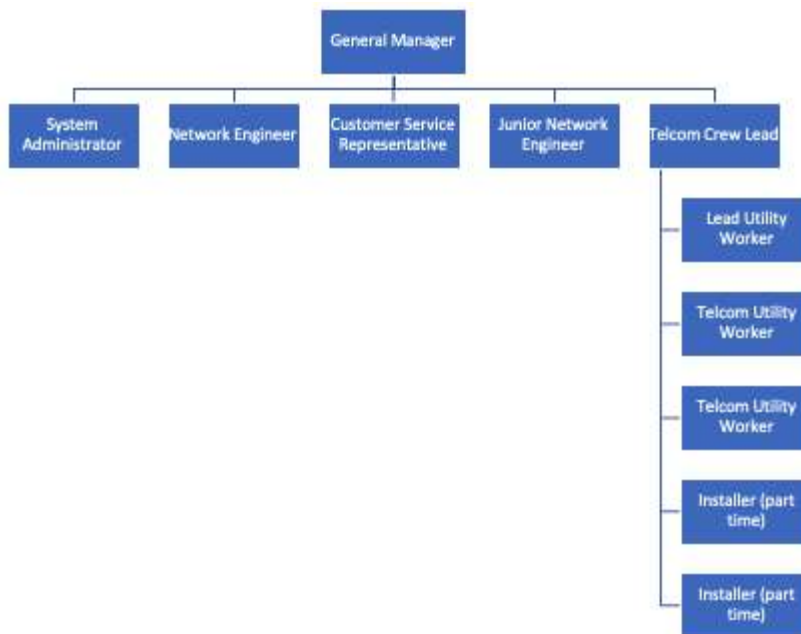
4. SandyNet should add staff to improve operations and reduce risk

SandyNet has enjoyed great success despite operating with an extremely lean staffing structure. Looking ahead, SandyNet should grow its staff to provide greater flexibility, add redundancy, and reduce pressure on key personnel. These changes will improve SandyNet's operations and reduce risk of staff turnover, burnout, or errors.

4.1 Stakeholder interviews and analysis of ISP operations indicates that SandyNet may face challenges if it does not increase staff capacity

SandyNet currently operates with a lean staffing structure that presents several challenges to the enterprise, including potential issues with customer service and slowdown of subscriber onboarding in times of peak demand due to lack of installers. Key personnel positions, such as the General Manager role, operate with little redundancy or support handling day to day operational needs. The enterprise generally lacks redundancy for key roles creating potential gaps in critical functions in the event of unexpected staff absence or turn over. The typical staff for an ISP with 3,000-7,000 customers consists of at least 15 employees, and sometimes considerably more depending upon the amount of construction work done in-house. SandyNet currently has 11 staff and pushes the boundaries of what can be sustainably achieved with a staff of that size.

SandyNet Organizational Chart



4.2 Benchmarks from similar ISPs emphasize need for additional staff while stakeholder interviews underscore risk of burnout for current staff

This plan compared the staffing structure of three regional ISPs to SandyNet. Results showed that in addition to operating with fewer staff than typical in the industry, SandyNet has fewer customer service staff than its peers, and fewer staff even than a peer ISP with fewer subscribers. All of the comparable ISPs also had at least three network engineers, to SandyNet's two.

SandyNet currently has only one customer service representative (CSR) on staff. The enterprise is known for its excellent customer service, but current staff go above and beyond to maintain this excellence with working habits that are not sustainable. For example, SandyNet leadership covers after hours (evenings and weekends) customer service on an on-call basis. The lack of multiple CSRs was flagged by several stakeholders as an issue that could negatively impact customer experience, and one peer ISP manager interviewed stated that SandyNet should have at least four customer service representatives given its size.

Variation in staffing levels and the organization of small ISPs is natural, and depends upon the particular ISP strategies. For example, MINET started out with a relatively large staff that allowed them to add thousands of subscribers without needing to hire additional personnel. Other ISPs may have arrangements with entities that allow them to "borrow" staff as needed. Beacon Broadband only has one full-time network engineer, but their arrangement with Peak Internet, another ISP, gives them access to two additional network engineers when needed. However, SandyNet practices, such as the General Manager also overseeing City IT responsibilities and staff handling after-hours customer service calls reflect a notably lean approach to ISP staffing.

Staffing Structure of Comparable ISPs

Staff Role	SandyNet 3900 subs	MINET 7500 subs	Beacon 3550 subs	Average Salary Ranges in Oregon (in 1000s)
CEO/General Manager	1	1	1	\$107-182
Office Manager			1	\$54-84
Customer Service Representatives (CSRs)	1	8	5	\$38-40
Network Engineers	2	3	1	\$103-143
Systems Administrator	1			\$74-130
Field Technicians	6	11	7	\$53-79
Sales Representatives			2	\$51-91
Marketing Manager		1	1	\$68-122
Accountant/Bookkeeper		1	1	\$55-82
Finance Manager		1	1	\$80-177
Total staff	11	26	20	

Stakeholders consistently highlighted the impressive efforts of SandyNet staff at all levels. However, this model of operating at full capacity with on-call availability poses risks, such as burnout and turnover, particularly given SandyNet's lack of staffing redundancy.

4.3 SandyNet should grow its staff and staff capabilities

As revenues are increased, SandyNet should consider allocating funds to implement the following staffing changes to mitigate challenges identified above. These changes are presented in order of priority, but SandyNet leaders should re-examine and re-prioritize based on updated business or operational concerns.

- 1. Hire after-hours customer service function:** Hiring an after-hours customer service function will allow SandyNet to continue delivering the great service it is known for, while at the same time relieving a burden from staff who are already operating at capacity. Service providers like NRTC, AnswerNet, and EPB can be contracted to field customer calls and provide basic troubleshooting, and SandyNet has pursued exploratory conversations with these vendors since 2023. Employing such services will ensure that customers can always speak with a person when

they are having service issues without having to rely on existing staff fielding calls on nights and weekends.

2. **Separate the SandyNet General Manager role from City IT role:** SandyNet's GM should be fully focused on running the enterprise. The City would also gain additional leverage from a dedicated IT staff member who could devote their full capacity to City IT needs.
3. **Add two additional customer service staff:** Filling these positions will immediately add resilience by ensuring backup is available for the current CSR role, and bring SandyNet more in line with regional and industry standards. Hiring additional customer service staff will also spread the burden of evening, weekend, and holiday on-call work.
4. **Add one additional network engineer:** Adding a third network engineer will ensure that SandyNet can continue to offer high quality and reliable service, relieve pressure on existing engineers, and bring Sandynet's staffing in line with regional norms.
5. **Add an assistant General Manager and implement more leadership opportunities for staff:** Adding an assistant general manager to oversee daily operations will create a stronger leadership structure that allows the GM to focus on high-level strategic work that is essential to the long term stability of the enterprise. With daily operations covered by an assistant GM, the GM can spend appropriate time on initiatives such as rate changes, reporting / compliance, financial planning, special projects (like more intentional marketing efforts) and the creation of robust and timely reports for the City Council and Advisory Council.

Freeing up some of the GM's time will also enable them to better engage with Sandy's community and function as the public face of the organization (e.g. by regularly attending community events). Developing and maintaining a strong community presence was identified as an essential part of business development by interviewees.

Other staff, with appropriate training, could also be promoted to management roles. For example, a senior network engineer could oversee the engineering team, and a lead utility worker could supervise the utility crew's day to day operations.

6. **Contract for external support to develop and implement a marketing campaign:** SandyNet has engaged in limited marketing efforts to date. Though it currently has a high take rate and limited competition, these conditions are not guaranteed in the future. Solidifying brand presence, awareness, and loyalty through marketing will help to capture business customers within the city now, and accelerate customer acquisition. Outsourcing to a professional marketing firm will be most efficient for SandyNet, and the contracted services should scale as the enterprise ramps up its marketing efforts. Sandynet should also consider industry standard marketing "quick wins", with or without professional marketing support, such as tabling at local events, sponsoring a local youth sports team, or implementing a customer referral program.

SandyNet should also seize opportunities to publicly celebrate its successes. Multiple Sandy stakeholders highlighted SandyNet’s excellent service and value, and indicated that they’d like to see more promotion of SandyNet. This could include large public celebrations of SandyNet milestones, such as achieving 100% coverage in the city, or the completion of other network construction projects.

- 7. Establish talent pipelines to support future staff recruitment:** SandyNet should proactively identify and cultivate talent pipelines to ease the difficulties recruiting qualified technical staff in the future. SandyNet may begin by leveraging the regional educational institutions offering degree programs in fields relevant to the ISP’s staffing needs. The General Manager could pursue connections with program directors, present to classes, and generally make SandyNet’s presence as an employer known to these institutions.

Regional educational institutions with programs relevant to SandyNet staffing

Institution	Link to programs	Relevant Programs
Chemeketa Community College	Programs and Classes	STEM program
Clackamas Community College	Degree Options	STEM and Industrial Tech
Mt Hood Community College	Degree Options	Computers, Cybersecurity, & Game Development; Engineering & Math
Portland Community College	Computer Information Systems ; Electronic Engineering Technology	Computer Information Systems; Electronic Engineering Technology
Portland State University	Computer Engineering; Electrical Engineering	Computer Engineering; Electrical Engineering
University of Portland	Management Information Systems	Management Information Systems

SandyNet could also work to build its staff pipeline by developing apprenticeship programs and internships to introduce high school students and early career workers to the industry.

5. Rate adjustments are needed to ensure SandyNet's long term financial health

This section makes the case that SandyNet should adjust its rates to ensure the financial sustainability of the enterprise, adequately prepare for asset depreciation, and grow its staff.

5.1 SandyNet's rates lower than comparable ISPs in the Oregon and significantly lower than industry averages

A comparison with other Oregon ISPs (see table below) reveals that SandyNet's residential service tiers are priced lower than those of its peers. Comparable ISPs were selected based on their provision of fiber services, their similar size to SandyNet in terms of subscribers, and, in the case of municipal ISPs, their focus on operational sustainability rather than profit, thus having the motivation to keep rates low.

SandyNet's price for its base residential tier is \$10-\$35 lower than those of comparable ISPs. The price of SandyNet's base tier symmetrical 500 mbps service is also \$10 less than the 15/2 DSL service offered in Sandy by Zply, a large national competitor providing service in and around Sandy.

SandyNet's rates also fall well below national averages. A recent study by the Technology Policy Institute indicates that 1G service plans have an average monthly price between \$105-\$118.

SandyNet, like half of the comparable ISPs, does not differentiate the price of residential and non-SLA business service. However, this is an uncommon practice nationally, where higher rates for business service are the norm. As the table below shows, the ISPs that differentiate business and residential pricing charge significantly more for business service than residential.

Rate Comparison of Oregon ISPs Offering Fiber Service

ISP Name	Approx. Subs	Muni.	Private	Res. Base	Res. Mid	Res. High	Bus. Base	Bus. Mid	Bus. High
SandyNet	3900	X		\$44.95	\$59.95	\$80.00	N/A	N/A	N/A
Beacon Broadband Inc.	3500		X	\$55.00	\$85.00	\$120.00	\$120.00	\$225.00	N/A
HiLight	1500	X		\$55.00	\$125.00	N/A	\$75.00	\$200.00	\$300.00
MINET	7500	X		\$59.99	\$84.99	\$129.99	\$59.99	\$84.99	\$129.99
Molalla Communications Co.	6500		X	\$75.00	\$125.00	N/A	N/A	N/A	N/A
Stayton	6500		X	\$80.00	\$90.00	\$130.00	\$80.00	\$90.00	\$130.00

Coop.Telephone Co.									
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5.2 SandyNet should create separate pricing tiers for non-SLA business customers

SandyNet should consider creating separate pricing tiers for non-SLA business customers, in line with industry standards. Importantly, SandyNet's non-SLA business customers currently get network priority, which represents additional value that they are not currently charged for. Businesses can more readily absorb higher rates as part of their costs, making such increases less burdensome than for residential customers. Creating non-SLA business pricing will likely become an important revenue generation vehicle for SandyNet's long term financial and operational health.

5.3 Rate adjustment models suggest several options to responsibly to increase revenue

RISI created a pricing analysis tool to allow SandyNet to explore the impacts of various price adjustment scenarios. The tool enables SandyNet leadership to make data driven pricing decisions by comparing multiple pricing scenarios, forecasting the impact of rate adjustments on operational revenue, and modeling customer growth.

5.3.1 SandyNet should target a minimum \$12 increase in Average Revenue Per User to account for medium and long term operational needs

SandyNet's average revenue per user (ARPU) is currently \$50. In order to generate adequate revenue to devote appropriate funding to asset depreciation, staffing, and capital projects recommendations in this plan, it should raise its rates to increase ARPU to at least \$62. Though raising rates should never be done lightly, for the sake of Sandy residents and customers, it is imperative that SandyNet raise rates in their current situation to ensure long term operational sustainability. Fortunately, the enterprise's historically low rates have left it with ample room to raise prices while remaining one of the most affordable ISPs in Oregon if not the country.

This plan presents three possible scenarios that raise ARPU by at least \$12. Each scenario includes price differentiation between business and residential customers in line with standard industry best practice. This strategy also shifts costs onto entities deriving greater value from the network (e.g. through network prioritization), rather than onto standard residential consumers. However, there are numerous scenarios available to SandyNet that would achieve the same revenue goals, and it should utilize the pricing tool associated with this plan to test and fine tune options that are acceptable to all relevant stakeholders.

Three possible options for rate adjustment scenario for SandyNet to consider include:

1. **Option 1: Raise all residential tiers by \$12 and all business tiers by \$24.** This would raise SandyNet's ARPU by an estimated \$12.61.

2. **Option 2: Raise entry-level residential and business rates by \$12/month, and raise higher rates by greater amounts.** This scenario results in an estimated ARPU increase of \$14, and would give SandyNet a little more flexibility to pay debt faster, invest in staff, and engage in providing other community benefits.
3. **Option 3: Minimize rate increases for base tier residential users, and raise the rates of higher tiers by greater margins** This option would be similar to option two, but prioritizes keeping the bottom tier residential price increase as low as possible while still achieving the overall target ARPU increase. Notably, because of SandyNet’s customer distribution, analysis showed that SandyNet cannot get away with raising their lowest tier less than \$8 while still achieving a \$12 overall increase in ARPU.

The tables below outline the details and impact of these rate adjustment options as modeled in the pricing analysis tool created for this plan.

Residential Pricing Options Input

Service Tier	Current Base Rate Per Month	Addition to Base Rate Option 1	Addition to Base Rate Option 2	Addition to Base Rate Option 3
Base (Half Gig)	\$44.95	\$12.00	\$12.00	\$8.00
Mid (1 Gig)	\$59.95	\$12.00	\$16.00	\$16.00
High (2 Gig)	\$80.00	\$12.00	\$24.00	\$24.00
5 Gig	\$110.00	\$12.00	\$24.00	\$24.00
Base (Half Gig) CBX	\$64.95	\$12.00	\$12.00	\$12.00
Mid (1 Gig) CBX	\$84.95	\$12.00	\$24.00	\$24.00
Wireless base (25/5)	\$39.95	\$12.00	\$12.00	\$12.00
Wireless mid (50/10)	\$49.95	\$12.00	\$24.00	\$24.00

Business Pricing Options Input

Service Tier	Current Base Rate Per Month	Addition to Base Rate Option 1	Addition to Base Rate Option 2	Addition to Base Rate Option 3
Base (Half Gig)	\$44.95	\$24.00	\$24.00	\$36.00
Mid (1 Gig)	\$59.95	\$24.00	\$36.00	\$48.00
High (2 Gig)	\$80.00	\$24.00	\$48.00	\$56.00
5 Gig	\$110.00	\$24.00	\$56.00	\$64.00
Base (Half Gig) CBX	\$64.95	\$24.00	\$24.00	\$36.00
Mid (1 Gig) CBX	\$84.95	\$24.00	\$36.00	\$48.00
Wireless base (25/5)	\$39.95	\$24.00	\$24.00	\$36.00
Wireless mid (50/10)	\$49.95	\$24.00	\$36.00	\$48.00

Combined Residential and Business ARPU output

	Option 1	Option 2	Option 3
ARPU	\$62.64	\$64.12	\$62.23
Difference between current ARPU and APRU with adjusted rates	\$12.61	\$14.09	\$12.20

SandyNet Annual Revenue Projections

Year	2025	2026	2027	2028	2029	Total Revenues and Increase Over Baseline at 5 years
Baseline Revenue Based on Current Rates	\$2,395,484	\$2,280,212	\$2,292,220	\$2,304,227	\$2,316,234	\$11,588,377
Combined Res. and Bus. Revenue Pricing Option 1	\$2,999,352	\$3,021,903	\$3,044,455	\$3,067,006	\$3,089,558	\$15,222,275
Revenue Increase Over Baseline	\$603,868	\$741,691	\$752,235	\$762,779	\$773,324	\$3,633,898
Combined Res. and Bus. Revenue Pricing Option 2	\$3,070,011	\$3,093,094	\$3,116,177	\$3,139,260	\$3,162,342	\$15,580,884
Revenue Increase Over Baseline	\$674,528	\$812,882	\$823,957	\$835,033	\$846,108	\$3,992,507
Combined Res. and Bus. Revenue Pricing Option 3	\$2,979,765	\$3,002,169	\$3,024,573	\$3,046,977	\$3,069,382	\$15,122,866
Revenue Increase Over Baseline	\$584,281	\$721,957	\$732,354	\$742,750	\$753,147	\$3,534,489

5.3.2 SandyNet is well positioned to meet any optics challenges presented by rate adjustments

Though rate adjustments can present customer relations difficulties, SandyNet's historically low rates have left the operation significant room to raise rates while still remaining competitive. Additionally, SandyNet enjoys a sterling reputation in the community and a proven customer service track record that functions as a strong PR base from which to make adjustments. To ease possible challenges around pricing changes, SandyNet may consider employing the following strategies:

- Send mailers with bills and conduct email campaigns before describing the adjustments, before, during, and after changes, starting two months before the increases
- Emphasize both the necessity of rate changes as well as positive changes adjustments will bring. Focus on points such as equipment upgrades / replacements to maintain the reliability and speeds customers love, adding key staff positions to ensure network reliability and resiliency, and keeping pace with inflation
- Review facts and messaging with SandyNet staff, City Councilors, and other City staff so that they are prepared to answer questions about rate changes
- Continually reaffirm SandyNet's commitment to excellent, affordable service through rates that will allow SandyNet to keep serving the community far into the future in all messaging, including website, mailers, and emails

5.4 SandyNet may wish to consider creating a low price tier or subsidy program to replace the defunct federal Affordable Connectivity Program

SandyNet may wish to consider creating an affordable internet package or subsidy program to replace the ACP in line with its mission to remove barriers to broadband access. SandyNet facilitated a \$30/month discount (paid by the federal government) for qualifying households when the ACP program was active, and the City currently offers reduced water and wastewater rates to qualifying customers. While some version of a federal internet affordability program may emerge in the future, if SandyNet were to enact its own program similar to that of the Water Department's, it could ensure that low-income residents have access to subsidized high quality internet service, while avoiding the administrative burden that comes with federal oversight.

SandyNet had relatively few (+/- 50) customers using ACP while the program was active. Assuming the same number of customers and the same \$30 discount that the ACP provided, it would cost approximately \$18,000 per year to run the program. Implementing the rate changes discussed above should provide enough additional revenue to support a subsidy program of this modest size.

The City currently qualifies customers for its discounted water and sewer rates, and may be able to qualify SandyNet customers as well. If SandyNet must qualify customers themselves, they could tie eligibility to participation in Federal aid programs (e.g. SNAP, WIC, Medicaid), and require customers to

furnish copies of participation documentation annually. Alternatively, SandyNet could engage an outside agency to conduct qualification and verification work on a contract basis.

6. Improving SandyNet’s governance practices will benefit operations, aid in strategic decision making, and increase alignment with municipal leadership and functions.

As an enterprise fund targeting financial sustainability, SandyNet should strive to approach governance and operational decision making with a more structured business and financial lens. This section outlines recommendations concerning SandNet’s advisory board and leadership.

6.1 SandyNet’s advisory board should require more advanced financial reporting, and provide more rigorous advisory support with that reporting

SandyNet's advisory board currently serves as a consultative body, providing advice and feedback to the management team. However, the organization could benefit from a more structured and reciprocal relationship with the board, akin with the practices of a corporate board of directors, while still maintaining the advisory board's official advisory capacity and ultimate decision making authority with the city council. To achieve this, the following steps are recommended:

- **Provide regular reports:** SandyNet leadership should deliver comprehensive financial and operational reports to the board at defined intervals. The board should specify the format and content of these reports to ensure they are aligned with the organization's strategic needs
- **Ensure regular meetings:** The board should meet on a regular basis to review the reports, discuss organizational strategy, and develop formal recommendations for the City Council
- **Establish a relationship of mutual accountability:** SandyNet leadership should be accountable to the advisory board, responding to concerns and recommendations in a consistent and timely manner. Strong accountability exercises may include regular goal setting across finances and operations and tracking progress against goals.

SandyNet should also target retaining and adding advisory board members with financial, legal, engineering, and operational expertise. It is best practice for municipal utilities to staff their advisory boards with subject matter experts, as these experts can use their knowledge in service of the ISP while obviating the need for housing some of this expertise in the organization or with city policy makers, such as the council. The council should still ideally provide strategic input for the advisory board such as clear long term goals. This structure and board make up will allow SandyNet to bring fully formed and vetted

strategies to the city council, minimizing back-and-forth and solidifying the council’s confidence in SandyNet’s processes.

7. SandyNet should continue to prioritize resources to ensure compliance with relevant Federal and State regulations

ISPs must comply with varied and complex State and Federal reporting and regulatory requirements. SandyNet currently contracts with Logicom, a telecommunications regulation consultant for some of their compliance needs. SandyNet should consider growing this expert consulting relationship to ensure full compliance with Federal and State regulation.

This section highlights federal and state reporting and compliance requirements for SandyNet’s consideration. SandyNet should consult qualified legal counsel for ultimate direction on how to comply with state and federal regulations.

7.1 Federal requirements for SandyNet’s awareness

Broadband Consumer Labels: Similar to nutritional labels on food products, the FCC requires broadband consumer labels to clearly disclose the specifics of the broadband service provided. This initiative aims to enhance transparency for consumers, detailing what they can expect from their internet service. Smaller ISPs with fewer than 100,000 subscribers must adhere to this requirement by October 10, 2024.

SandyNet is currently working on its first Broadband Consumer Labels.

Broadband Data Collection (BDC) Filings: Broadband providers must annually report broadband data to ensure compliance with regulatory standards. Specific data as of December 31st must be submitted by the following March 1st, and data as of June 1st is due by September 1st. Failure to comply can result in significant financial penalties. More information is available on the [BDC FAQ](#) website.

SandyNet currently does its own BDC filings.

Communications Assistance for Law Enforcement Act (CALEA) System Security and Integrity (SSI) Plan:

This plan outlines how telecom providers comply with law enforcement assistance requirements and is filed annually. Carriers must detail in their SSI Plan the specific measures taken to comply with CALEA, such as the technological and procedural steps implemented. The plan, which is not disclosed publicly, includes carrier contact information and a compliance certification. Filings are now required to be submitted electronically through the CALEA Electronic Filing System (CEFS), streamlining the process and enhancing security. For more information see the [Sample SSI Plan Checklist](#) provided by the FCC.

Logicom provided SandyNet with a protocol to follow in the event they need to respond to a subpoena or other law enforcement contact, and completes the required annual filing for SandyNet.

Customer Proprietary Network Information (CPNI) Certification: All Voice over Internet Protocol (VoIP) providers must obtain CPNI certification. This details the measures providers take to protect customer information, ensuring privacy and data security. The complexity of complying with CPNI regulations often necessitates legal guidance.

Logicom created SandyNet's CPNI policy and protocol, and handles the annual attestation renewal. If customers are able to sign up for service completely online (i.e. without any interaction with customer service staff), there may be implications for CPNI compliance, and SandyNet should consider updating its CPNI practices with Logicom.

Digital Discrimination Annual Certification: Introduced in 2023, this new certification requires ISPs to affirmatively state their compliance with non-discrimination standards in broadband deployment. This annual certification aims to ensure that broadband services are offered equitably across different communities without biased restrictions. Although specific reporting requirements for this certification are still under development, Oregon is part of a 15 state coalition advocating for exemption from these regulations, arguing that they are redundant and overlap with existing reporting mandates.

Logicom has provided SandyNet with a client alert regarding this requirement. Though no action is needed at this time, SandyNet should monitor this requirement.

Digital Millennium Copyright Act (DMCA): The DMCA protects ISPs from liability for copyright infringement by their users, contingent upon the ISPs meeting specific statutory requirements. Under Section 512 of the DMCA, ISPs are obligated to implement a notice-and-takedown process, which enables copyright owners to report alleged infringements. Upon receiving such notices, ISPs must promptly remove the reported content to benefit from "safe harbor" protections. Additionally, ISPs are required to publicly disclose these operational policies and may need to submit annual compliance reports detailing their adherence to these rules. For more information, visit the [DMCA website](#) and the [Overview of Section 512](#).

Logicom has provided SandyNet with a policy and protocol for responding to claims. SandyNet should ensure that they respond to all DMCA claims.

Emergency Alert System (EAS) Reporting: ISPs and other participants in the national EAS must annually file with the EAS Test Reporting System (ETRS), coordinated by the FCC and the Federal Emergency Management Agency (FEMA).

This requirement only applies to ISPs that offer video services, and SandyNet's third party video provider should be responsible for complying with EAS reporting regulations.

SandyNet should confirm the division of responsibility and full compliance on the part of the third party provider.

Network Outage Reporting System (NORS): The FCC mandates that telecom providers use NORS to report significant network outages, ensuring reliable communications infrastructure. Providers must submit an initial outage report within three calendar days of discovering the outage. A final, detailed report is due no later than 30 days after the outage is identified.

NORS has specific criteria for what triggers the need to report an outage. However, it is possible that the FCC may expand the criteria and require ISPs to report even minor outages in the future.

SandyNet should monitor NORS-related developments, review current reporting criteria, and review past outages to ensure correct reporting.

Universal Service Administrative Company (USAC) Filings: Telecom providers must contribute to the Universal Service Fund (USF), which is managed by the Universal Service Administration Company (USAC). Providers must register with USAC, annually file Form 499 to report their revenues, and thereby determine their required contribution to the USF. Exemptions apply under the De Minimis Rule for providers whose projected contributions would be less than \$10,000 annually, although they must still file annual reports. The FCC regularly adjusts the contribution factor rules, and state-level universal service programs may have different requirements. Providers are advised to consult with legal counsel and the FCC for the most current guidance. Logicom currently handles SandyNet's quarterly and annual USAC filings.

Form 499-A must be filed annually by April 1st. Form 499-Q (quarterly filings) are due on February 1st, May 1st, August 1st, and November 1st

7.2 Non-federal requirements for SandyNet's awareness

SandyNet management should coordinate with City management to ensure compliance with following Oregon requirements and other reporting best practices:

Annual Fee Payment and Statement: ISPs that hold a Certificate of Authority from the PUC must annually pay a regulatory fee and submit an accompanying fee statement to the Oregon Public Utility Commission (PUC) by April 1st. A late fee is imposed starting April 2nd, with additional penalties accruing each month. The statement must be filed online or via mail with an original signature.

Oregon Annual Reporting Forms: ISPs must file Form C: Annual Report Interexchange Carriers, Form L: Annual Report Local Exchange Carriers, and Form O: Annual Report to the Commission by April 1st and Form I by October 31st annually. These reports require detailed operational data, and failure to comply may lead to the cancellation of the Certificate of Authority. All forms must be submitted electronically

Oregon Universal Service Fund (OUSF) Contributions: ISPs must file the OUS1 Worksheet annually by February 10th and the OUS2 Contribution Worksheet quarterly. These worksheets detail the ISP's

contributions to the fund, supporting universal service across Oregon. Late filings incur a \$100 fee, and delayed payments are subject to a 9% daily interest on the balance due.

OUSF Quarterly Filing Deadlines:

- May 28th (Quarter 1: January 1 - March 31)
- August 28th (Quarter 2: April 1 - June 30)
- November 28th (Quarter 3: July 1 - September 30)
- February 28th (Quarter 4: October 1 - December 31)

Residential Service Protection Fund (RSPF): Contributions are due monthly by the 21st, supporting programs that ensure service affordability and availability. Late filings and payments attract a \$100 fee and a 9% daily interest penalty, respectively.

For further details and forms, see the [Oregon PUC Telecommunications page](#) or refer to the PUC's [Regulatory Requirements Chart](#).

Data Retention Policy: SandyNet should ensure that the City's data retention policy specifically references SandyNet.

Disability Access: SandyNet should conduct a full review of their inclusion in City accessibility policies as well as broadband-specific accessibility requirements (e.g. the [21st Century Communications and Video Accessibility Act](#)). It should also implement policies to thoroughly document (e.g. via meeting minutes) internal discussions on systems or platform changes, how they impact customers with disabilities, and what determinations were made to mitigate those impacts.

8. Network expansion will strengthen SandyNet and bring additional resources into the community

SandyNet is close to achieving 100% coverage within city limits, with only a few apartment buildings remaining to be connected. Once that significant milestone is met, strategic expansion outside of the City can bring additional revenue to the enterprise, and if structured well, will bring financial resources into the Sandy community.

This section outlines how SandyNet can evaluate growth opportunities outside city limits in a responsible manner to ensure fiscal sustainability while increasing financial and social benefits for the City.

8.1 Expanding the fiber network will help SandyNet to add customers, increase revenue, and grow sustainably

SandyNet should look to expansion of the physical fiber network and the concomitant customer growth to increase revenue. Growth is key to a successful operating model for municipally-owned ISPs at Sandy's scale and in line with SandyNet's mission.

At just under 4,000 customers, SandyNet has the foundational management staff and systems in place to allow for efficient scaling. This is a typical inflection point for ISPs where new subscribers can grow revenue linearly but only add costs incrementally. SandyNet's high penetration rate within city limits does not allow for much growth inside their current footprint, making expansion of the fiber network a more viable path to growth. Relatively modest growth will still help SandyNet reach its revenue targets, and successful expansion outside of city limits will provide reputational benefits to the ISP and City, increasing Sandy's center of gravity in the region.

8.2 Expansion to date

SandyNet has been focused on working inside city limits with great success. Currently it is on the cusp of achieving 100% service in Sandy proper and is finishing construction to bring fiber to the remaining homes in Sandy that are not served. This is a tremendous milestone. Additionally, Sandy's municipal code requires broadband to be expanded to future developments in the city, ensuring continued universal coverage.

Clackamas Broadband Exchange (CBX) recently engaged SandyNet to bring broadband access outside the city. Fiber has currently been deployed to the east and northeast of Sandy, and construction is underway southwest of the city. To date, CBX has decided where to build based on available grant funding, identification of under- and unserved areas, interest expressed by potential customers, and proximity to their existing fiber network. In this model CBX funds and builds out the fiber infrastructure, and SandyNet serves as the ISP, connecting customers' homes and businesses to the fiber and providing customer support.

The partnership has been beneficial to the City as SandyNet has not had to devote resources to construction - a complex and expensive endeavor - and the ISP is compensated on a per-customer basis. Since CBX covers fiber construction costs, there are no losses to SandyNet if customers aren't added to the network. SandyNet currently captures between 60-70 percent of revenues from customers added to the CBX network without any outlay of funds. CBX is also an open access network, meaning that SandyNet may experience varying levels of competition from other ISPs in CBX territories. Overall, there is little risk and much benefit to SandyNet participating in the CBX partnership.

In addition to construction, CBX also handles maintenance and repairs to the fiber, and has demonstrated a commitment to doing so in a way that upholds SandyNet's commitment to excellent service.

8.3 Frameworks for future expansion

There are two primary paths for expansion: continued partnership with CBX, and SandyNet building infrastructure itself. This section outlines considerations for both options.

8.3.1 Considerations if SandyNet were to grow their partnership with CBX

Though modest in its current scale, the partnership with CBX has been successful, and the amount of revenue flowing back to Sandy has increased over time. SandyNet should keep filling the role of ISP if CBX remains a strong operational partner and continues to expand its fiber network throughout Clackamas County.

Under this model, SandyNet likely will still need to follow CBX's lead on location and pacing of new construction. This may lead to the *perception* that expansion is scattershot, but such work still supports SandyNet's mission and brings in revenue to fund other goals and increase SandyNet's operational and financial health. Additionally, CBX has historically been dependent on grants to fund network expansion. Under this model, if grant funding is not available, expansion may not be able to progress at the desired rate. The Broadband Equity, Access, and Deployment (BEAD) program may provide a funding opportunity, with CBX as the infrastructure builder and SandyNet as operator, but beyond that program, it is not clear that much grant funding will be available to fuel CBX's expansion.

8.3.2 Considerations if SandyNet were to expand outside of Sandy as the infrastructure builder, owner, and operator

There are several advantages to SandyNet to building, owning, and operating their own fiber infrastructure outside of Sandy:

- SandyNet would fully control location and pace of expansion
- The infrastructure would count as an asset that can be used to leverage debt
- Operational logistics would be simplified since SandyNet would have end to end control of the system
- Ownership of the fiber, rather than operation in an open access environment, could prevent possible encroachment by competitive ISPs

ISPs - municipal or otherwise - that pursue any amount of meaningful expansion almost always use debt of some kind to achieve their goals. Use of debt for expansion would be a viable and ordinary path for SandyNet, but it should only be pursued after the following conditions are met:

- Staffing is stable and comparable with that of other ISPs of similar size, ensuring that SandyNet has the capacity to grow

- Sufficient data has been collected on take rates of CBX infrastructure to allow for confidence in modeling anticipated take rates outside of the city
- The business case for expansion has been fully developed, and revenue projections indicate that debt service coverage ratios are strong enough to satisfy financiers
- Financial practices throughout the enterprise are strengthened so that financiers have confidence in SandyNet's ability to track risks and make adjustments to their operating model to maintain debt service coverage

When these conditions are met and the expansion analysis is favorable, SandyNet should consider pursuing revenue bonds as debt financing for expansion. 30 year revenue bonds are safe, stable, and predictable. As essentially a public utility, there is no need for SandyNet to strain to make debt service payments on lending vehicles that are shorter and have greater principle and interest obligations.

SandyNet could consider various strategies around the sequencing of expansion, such as:

- Connecting homes and businesses along existing fiber routes outside city boundaries. For example, SandyNet could add customers along a fiber route already built to service a large commercial customer like a water treatment facility. Creating a business case for adding customers along existing fiber should not prove difficult, and this type of expansion is generally considered low hanging fruit for ISPs because of the minimal construction expense required.
- Building out fiber to the Urban Reserve Boundary (URB) areas identified in the 2017 Urban Growth Boundary Expansion Analysis. The URB contains areas of varying residential density as well as industrial areas, representing a potential mix of residential and business customers. Some areas of the URB, especially those southwest of the current Urban Growth Boundary, are not currently served by fiber networks. SandyNet should first develop a strong business case for serving these areas, with the ultimate goal of serving the entire URB. The ISP should pay attention to any possible equity issues that might arise if this strategy is followed, and make plans to mitigate such issues.
- Prioritizing the un- and underserved areas in proximity to Sandy. SandyNet would gain the first mover advantage by building in these areas. RISI's Rural Broadband Map (<https://rural-broadband-map.ruralinnovation.us/>) indicates that there are over 400 un- and underserved locations in the areas surrounding Sandy. Business modeling may be most accurate in these areas as there are no competitors offering fiber service. Building in un-and underserved areas also presents a strong equity case that could have reputational benefits for the ISP.

In these scenarios SandyNet would also need to mitigate the optics challenges inherent in choosing one area to build ahead of another. ISPs navigate this by ensuring that their plans are defensible, and communicate expansion plans clearly with sensitive messaging around how the plans were made.

8.4 SandyNet should be a strong driver for economic development before and after expansion

Growing bodies of academic research show that widespread broadband access has positive economic impacts,¹ including increases in regional GDP², consumer surplus, and business startup rates.³ Each of these conditions result in more money flowing into- and staying in- local economies. Expansion of SandyNet’s footprint will garner economic benefits for the City and help Sandy to meet Goal 2 of its Economic Development Strategic Plan to “leverage our investments in technology to maximize economic benefits.”

Even without expansion, there is significant precedent for municipal ISPs driving economic development via the quality of the infrastructure on its own. Access to quality broadband connections has positive correlations with increased real estate values and home sales. Municipal provision of such services also signals that a community is a great place to live, with strong, forward thinking public sector leadership. Access to fast, reliable broadband enhances quality of life and fosters connections across multiple social domains like families, businesses, educational institutions, and the health care system. When a community recognizes this - as Sandy has - and strives to provide broadband access, it clearly demonstrates their commitment to making that community a prime destination for people to live, conduct business, and visit.

Quality broadband access is a necessary precondition for remote work as well. Expansion outside of the city may also help to attract remote workers who would prefer to live in the environs rather than the city proper. Such workers would still provide economic benefit to Sandy as they will patronize city businesses. The economic benefits of expansion would be further catalyzed through intentional strategies centered on business development, entrepreneurship support, and workforce expansion. Bringing businesses into communities provides a multiplier effect, as the businesses not only spend money in the community, but also establish it as a desirable place for other businesses to locate.

SandyNet can also take an active role in economic development by supporting and implementing programming that promotes internet usage and can help drive the creation of quality jobs that is part of Sandy’s strategic plan. There are numerous national examples of initiatives undertaken by municipal and cooperative ISPs to stimulate economic development in creative ways beyond simply providing connectivity. A few examples include:

¹ Kessler et al. 2021 “How will expanding broadband access benefit Knox County, TN?” UT Knoxville, Boyd Center for Business and Economic Research.

² Qiang, C.Z. & C.M. Rossotto 2009 “Economic Impacts of Broadband.” In Information and Communications for Development 2009: Extending Reach and Increasing Impact. Washington DC: World Bank, p.35-50

³ Deller et al. 2021 “Rural broadband speeds and business startup rates.” American Journal of Agricultural Economics 104(3):999-1025

- Paul Bunyan Communications, a cooperative ISP in Bemidji, Minnesota hosts the annual Gigazone Gaming Championship and TechXpo. This event draws thousands of participants to Bemidji each year. In addition to the gaming competitions, the event also serves to connect tech businesses with the general public and potential employees, promoting internet use and tech career opportunities.
- Greenlight Community Broadband, a municipal ISP in Wilson, North Carolina supported the development of the GigEast Exchange, an innovation hub and co-working space. GigEast hosts the RIoT Accelerator Program, which provides intensive business coaching and other services to early-stage startups and supports tech entrepreneurship.
- NextLight, a municipal ISP in Longmont, Colorado, supports Longmont Startup Week by providing fiber internet connectivity to the event's "base camps." The event is a week-long convening of entrepreneurs, investors, and experts designed to nurture Longmont's entrepreneurial ecosystem and provide support for early-stage startups.

If SandyNet chooses to develop and implement similar programming, it would provide benefits to both the enterprise and Sandy at large by helping to address the goals and strategies outlined in Sandy's Economic Development Strategic Plan.

RURAL INNOVATION STRATEGIES, INC.

SandyNet Masterplan: Findings & Recommendations

December 16, 2024



SandyNet is an outstanding ISP that should consider adjustments to ensure long-term stability

Item # 5.

- SandyNet provides superb customer service, fast and reliable speeds, and some of the lowest costs to customers in the country
- Growing to 4,000+ subs is a milestone; SandyNet has achieved minimum viable scale but customer & revenue growth will increase resilience
- SandyNet's finances are stable but the enterprise does not have revenue critical to long-term operational sustainability
- Investments in network infrastructure and additional staff will mitigate current challenges and better insulate against risks

The physical plant will suffer greater resiliency and depreciation issues if steps are not taken to prepare

Item # 5.

- Previous asset replacement funding was allocated to other operational priorities (e.g., construction)
- The plan recommends establishing a depreciation reserve fund based on a seven-year depreciation cycle for electronics and 30 years for fiber
- Resiliency/redundancy best practices suggest SandyNet would benefit from another telecom central office

SandyNet should more formally account for network depreciation costs — and budget for a telecom data center upgrade

Item # 5.

Recommendations:

- ❑ Grow revenue to accommodate adequate depreciation funds for fiber and electronics, targeting ~\$550K annually
- ❑ Plan to build a second telecom data center to mitigate risks of single-point failure, possibly in conjunction with other city builds/office space expansion



Staffing levels below industry norms create unnecessary risks

Item # 5.

- SandyNet operates with 11 employees; typical ISPs with 3,000-7,000 customers have 15+ employees
- Inadequate staffing levels has resulted in burnout, and increased risks due to lack of resilience in particular roles
- Replacing key personnel would be particularly hard due to SandyNet context



SandyNet should add staff to improve operations and reduce risk

Item # 5.

Recommendations:

- ❑ Hire after-hours customer service function
- ❑ Separate SandyNet general manager role from city IT role
- ❑ Add two additional customer service staff, one additional network engineer, and an assistant general manager
- ❑ Contract for external support to develop and implement a marketing campaign
- ❑ Establish stronger talent pipelines to support future staff recruitment

SandyNet charges some of the lowest rates in the nation, enabled by the staffing and depreciation decisions to-date

Item # 5.

- SandyNet rates are significantly below Oregon peers and national averages
- Rate adjustments will be required to adequately prepare for asset depreciation and rectify staff shortages
- RISI created a pricing analysis tool to allow SandyNet to explore the impacts of various price adjustment scenarios
- Rate adjustment models suggest several options to responsibly increase revenue

Rate adjustments are needed to ensure SandyNet's long-term financial health

Item # 5.

Recommendations:

- ❑ Create separate pricing tiers for non-SLA business customers
- ❑ Target a minimum \$12 increase in Average Revenue Per User (ARPU) to account for medium and long-term operational needs
- ❑ Evaluate a low-income subsidy program to mitigate rate increase impacts on low-income households



Bringing more structure to SandyNet operations, decision-making, and governance should start with greater advisory board involvement

Item # 5.

- Advisory board currently serves as consultative body
- SandyNet could benefit from increasing the structure of the relationship, adopting more of the practices of a corporate board of directors



Recommendations:

- ❑ Review financial, legal, engineering, and operational expertise of advisory board, and bolster areas of need
- ❑ Deliver structured, detailed financial and operational reports at defined intervals to the advisory board in a pre-arranged format to allow for strategic discussions and decision-making



Network expansion will strengthen SandyNet and bring additional resources into the community

Item # 5.

- SandyNet is close to achieving 100% coverage within city limits, with only a few apartment buildings remaining to be connected
- Strategic expansion outside of the city can bring additional revenue to the enterprise and financial resources to the community
- Master plan offers considerations for growth through existing CBX partnership and with SandyNet as builder, owner, and operator
- Measured, responsible growth will only benefit the city of Sandy, and SandyNet operations

Thank you

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[YouTube](#)

Item # 5.



Meeting Type: City Council
Meeting Date: December 16, 2024
From: Rebecca Markham, Executive Assistant (Development Services & Public Works)
Subject: Review of Interpretive Signs: Bell Street and 362nd Avenue

DECISION TO BE MADE:

Review and provide feedback on the Interpretive Signs project for Bell Street and 362nd Avenue.

PURPOSE / OBJECTIVE:

The objective is for the Sandy City Council to review and comment on the Interpretive Signs for Bell Street and 362nd Avenue. This is an opportunity for Council to review the new signs and provide any additional input prior to sending it to the State Historical Preservation Offices for review and approval.

BACKGROUND / CONTEXT:

As Bell Street and 362nd Avenue was being developed, the State Historic Preservation Office (SHPO) deemed the Lundeen property, barn, and bungalow “historic”, requiring special attention be brought in the form of four (4) Interpretive Signs. SHPO requires incorporation of historic facts and pictures of the farm, barn and asked for personal recollections from the Lundeen family members. SHPO also requested Sandy incorporate details about the City during the 19th and 20th century as well as a panel that mentions the Barlow Road and Sandy’s transformation to a tourism and recreation-based economy.

Staff contracted with SeaReach who also assisted the City with designing the Jonsrud Viewpoint sign. Staff also worked with the Sandy Historical Museum and Lars Lundeen who provided the City with old pictures of the property and family. We also incorporated details on the new park, Sandy Mtn Festival, and our local transit system.

The signs will be 4 feet long by 2 feet tall and will be placed along Bell Street and 362nd Avenue with two signs placed on each new section. Exact locations will be determined prior to receipt of the signs.

KEY CONSIDERATIONS / ANALYSIS:

- The boards are a requirement from the State Historic Preservation Office and will be a form of mitigation for the impacts of the new Bell Street and 362nd Avenue extension.

- The Memorandum of Agreement also attached to this staff report directed the City to install the boards within five (5) years of signing the agreement. The agreement was signed by the City on July 13, 2022

BUDGET IMPACT:

This project is budgeted as part of the 362nd and Bell road extension project. The contract for design and production of the interpretive sign panels totaled \$19,855.00. Installation of the signs on site will be performed by public works crews.

RECOMMENDATION:

Staff requests that the Sandy City Council review and provide feedback on the four “draft” panels. The panels ultimately must also be sent to SHPO for final review.

LIST OF ATTACHMENTS / EXHIBITS:

- Four draft interpretive panels
- Memorandum of Agreement (signed July 13, 2022)



lundeen jonsrud farm conceptual design

design draft 2

S E A R E A C H L T D .

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sheridan facsimile 503.843.2744
oregon 97378 email info@seareach.com

client city of sandy
39250 pioneer blvd
sandy, or 97055

contact rebecca markham
title executive assistant
email rmarkham@cityofsandy.com
phone 503.489.2160

drawing interpretive panels
scale nts
code SAN-001
project lundeen jonsrud farm panels

approval no changes, approved for fabrication make changes, show new proof
signature/date
After your signed approval, we will begin production. Any changes requested after this point will incur additional cost.

by mv **proofed** sj
date 11.08.24 **version** 2
pages 9

A Living History

Purchased in 1895, and built in 1914, this farm and homestead is an example of an early settlement in Sandy. From forest to dairy to pasture, **this property has stood the test of time.**

Like many homesteads in the Sandy area, this farm has gone through many changes. Over the years, the land has been logged, farmed, used for a dairy, and later served as range for beef cattle.

The property also features a collection of original buildings, including a Craftsman-style house and two barns that date back as far as 1914, that hint at what life in the Sandy area would have been like in the early 1900s.










Humble Beginnings

The City of Sandy started in 1853 as a simple homestead and way station along the Oregon Trail. New arrivals soon took notice of the area's many natural resources and began settling down to farm, cut trees, or provide services along this vital corridor. By the time Sandy was incorporated in 1913, the city was already flourishing due to the area's numerous sawmills and a growing number of visitors heading to Mt Hood.

1 exhibit panel
panel dimension 48" x 24"

SEAREACH LTD. 146 ne yamhill street sheridan oregon 97378 telephone 503.843.2005 facsimile 503.843.2744 email info@seareach.com	client city of sandy 39250 pioneer blvd sandy, or 97055	contact rebecca markham title executive assistant email rmarkham@cityofsandy.com phone 503.489.2160	drawing interpretive panels scale nts code SAN-001 project lundeen jonsrud farm panels	notes	by mv date 11.11.24 page	proofed version 1 2.1

interpretive panels | a living history - missing components

- need photo credits:**
- ① cows in pasture (scanned negative)
 - ② woman hauling logs with tractor
 - ③ two women in front of house
 - ④ looking east on main street

- better photo?:**
- ⑤ it would be great if we could get a better photo of the barn- perhaps taken on an overcast day. also, it would be good if we could get a picture of the bungalow

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project lundeen jonsrud farm panels


notes

by mv **proofed**
date 11.11.24 **version** 1

page 2.2 **298**

Founding Families

Gilbert Jonsrud, a member of one of Sandy's founding families, purchased this land in 1895. **It still belongs to his descendants, 130 years later,** providing a long line of family history at this location.




Gilbert Jonsrud standing in front of the pump house on the Jonsrud Farm near Sandy
Photo Courtesy -




Jonsrud family reunion - c. 1912. Front row, from left: Lilly, Grant, Lloyd, George, and James Jonsrud. Second row: Tillie with Dorothy & Eunice; Gilbert Jonsrud; Torkel & Kari. Third row: Robert Jonsrud; Joseph Jonsrud holding Russell; Minny Jonsrud; Emma Hauglum Jonsrud; Annie Bell Jonsrud (Carl Bell's aunt); Bert Jonsrud; John Jonsrud & Lewis Hauglum, seated. Back row: unknown; Mabel Jonsrud (Lundeen); unknown; Clara Jonsrud; another Gilbert Jonsrud who was visiting from Minnesota; Stella Jonsrud; Albert Jonsrud; and Art Jonsrud.
Photo Courtesy -

Growing up on this farm meant being an integral part of Sandy history. The Jonsrud brothers (Gilbert and Robert) started as partners in the sawmill business, a vital Sandy industry, with Robert later becoming well-known for his pre-fabricated log cabin designs, and Gilbert taking over the farm.



Robert Jonsrud pictured with his pre-fabricated log cabin design & logs - Photo courtesy The Oregonian - November 14th, 1948



Mabel Jonsrud (Lundeen) - Photo Courtesy of

Gilbert's daughter Mabel married Victor Lundeen in 1918 and immediately moved onto the Jonsrud family property which is now referred to as the "Lundeen Property."

A Unique Voice

When Phil Jonsrud passed away in 2012, at age 93, the City of Sandy lost one of its most distinctive original voices. Phil was long known as "Sandy's historian" because he thoroughly embodied the city's history, tradition, and character. He generously shared his unique insights while working extensively with the Sandy Historical Society and writing three popular books on local history.



Phil Jonsrud poses in 2002 with a book he wrote on the history of Sandy.
Photos Courtesy Sandy Historical Society



View of Mt. Hood from the Jonsrud Viewpoint
by Josemaria Toscano via AdobeStock

The Jonsrud family moved to Bluff Road in 1922. A spot was cleared that came to be known as Jonsrud Viewpoint where people could pull off the road and enjoy the view.

1 exhibit panel
panel dimension 48" x 24"

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interpretive panels | founding families - missing components

- need photo credits:**
- 1 Gilbert Jonsrud stands in front of pump house
 - 2 Jonsrud family photo
 - 3 Mabel Jonsrud
- these are probably all courtesy of Sandy Historical Society but we should be sure.

Founding Families

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Jonsrud family reunion - c. 1912. Front row, from left: Lilly, Grant, Lloyd, George, and James Jonsrud. Second row: Tillie with Dorothy & Eunice; Gilbert Jonsrud; Torkel & Kari. Third row: Robert Jonsrud; Joseph Jonsrud holding Russell; Minny Jonsrud; Emma Hauglum Jonsrud; Annie Bell Jonsrud (Carl Bell's aunt); Bert Jonsrud; John Jonsrud & Lewis Hauglum, seated. Back row: unknown; Mabel Jonsrud (Lundeen); unknown; Clara Jonsrud; another Gilbert Jonsrud who was visiting from Minnesota; Stella Jonsrud; Albert Jonsrud; and Art Jonsrud. Photo Courtesy -

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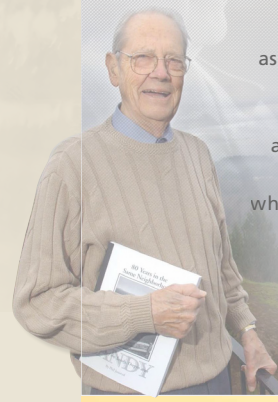


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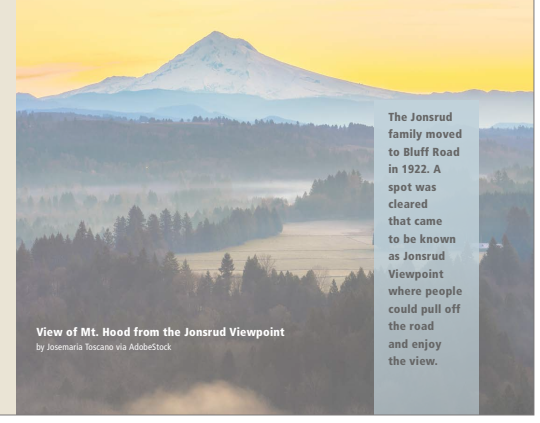


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Phil Jonsrud poses in 2002 with a book he wrote on the history of Sandy. Photos Courtesy Sandy Historical Society



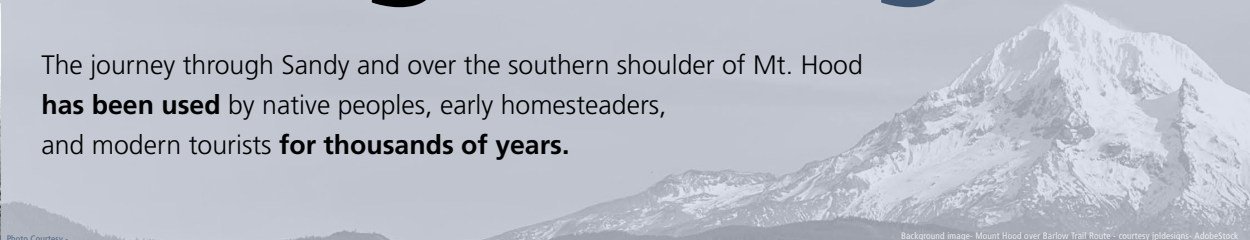
View of Mt. Hood from the Jonsrud Viewpoint by Josemaria Toscano via AdobeStock

The Jonsrud family moved to Bluff Road in 1922. A spot was cleared that came to be known as Jonsrud Viewpoint where people could pull off the road and enjoy the view.


Just Passing Through?




The journey through Sandy and over the southern shoulder of Mt. Hood **has been used** by native peoples, early homesteaders, and modern tourists **for thousands of years.**



Background image: Mount Hood over Barlow Trail Route - courtesy jadedesigns - AdobeStock



On the Barlow Road



From its unique position on one of the key routes crossing Oregon's Cascade Mountains, Sandy has long welcomed all types of travelers. Early wagon trains were grateful to reach Sandy after their dangerous journey over the mountains, and modern visitors enjoy stopping in Sandy on their way to and from Mt Hood. Sandy's proud tradition of serving travelers continues to this day with the launching of the city's own bus line extending throughout the local area and linking Sandy to Portland and Mt Hood.



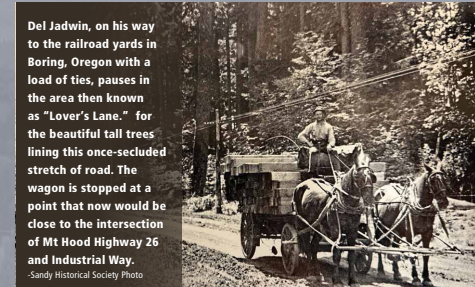


Photo Courtesy of [unreadable]

Sandy welcomes visitors with its new city park and world-class "pump track," while the Sandy Mountain Festival has been a popular attraction since 1972.



1916 Sandy Mountain Festival- Photo Courtesy of [unreadable]



Del Jadwin, on his way to the railroad yards in Boring, Oregon with a load of ties, pauses in the area then known as "Lover's Lane," for the beautiful tall trees lining this once-secluded stretch of road. The wagon is stopped at a point that now would be close to the intersection of Mt Hood Highway 26 and Industrial Way.

-Sandy Historical Society Photo



Visitors explore the booths at the Sandy Mountain Festival and wait for the parade to begin 20** - Photos by Jarid Scott Johnson





Photo Courtesy of [unreadable]

When Sam Barlow made the decision to forge a new Oregon Trail route over Mt Hood in 1846—this put the future city of Sandy on the map. It became the preferred route for settlers traveling over the Cascade Mountains.



The Barlow Road was reshaped into the Mt Hood Loop Highway in the 1920s, ushering in an era of modern travel and bringing countless travelers to Sandy.

1 exhibit panel
panel dimension 48" x 24"

SEAREACH LTD.
146 ne yamhill street telephone 503.843.2005
sheridan facsimile 503.843.2744
oregon 97378 email info@seareach.com

client city of sandy
39250 pioneer blvd
sandy, or 97055

contact rebecca markham
title executive assistant
email rmarkham@cityofsandy.com
phone 503.489.2160

drawing interpretive panels
scale nts
code SAN-001
project lundeen jonsrud farm panels

notes

by mv **proofed**
date 11.11.24 **version** 1
page 4.1

interpretive panels | just passing through? - missing components

need photo credits:

- 1 sandy mountain festival
- 2 vintage car & covered wagons

need new photo:

- 3 pump track photo is "for proof only" image pulled from internet. we need an accurate image w/ permission and credit

should re-scan:

- 4 del jadwin on lover's lane. this is a lower quality scan. it would look better if we could re-scan it.

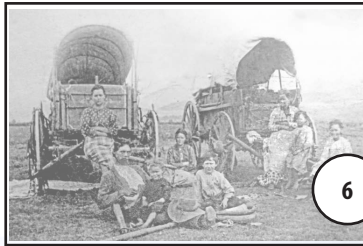
year?:

- 5 this caption would benefit from knowing what year the photo was taken.

replacing image:

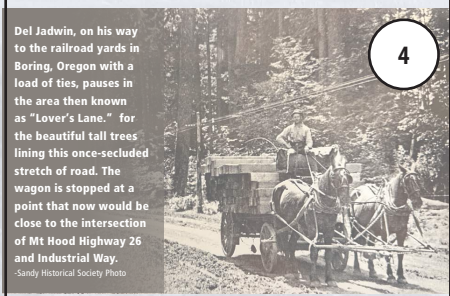
- 6 women & wagons- we may have an illustration that will work better in this space

Just Passing Through?



The journey through Sandy and over the southern shoulder of Mt. Hood **has been used** by native peoples, early homesteaders, and modern tourists **for thousands of years.**

From its unique position on one of the key routes crossing Oregon's Cascade Mountains, Sandy has long welcomed all types of travelers. Early wagon trains were grateful to reach Sandy after their dangerous journey over the mountains, and modern visitors enjoy stopping in Sandy on their way to and from Mt Hood. Sandy's proud tradition of serving travelers continues to this day with the launching of the city's own bus line extending throughout the local area and linking Sandy to Portland and Mt Hood.



On the Barlow Road

When Sam Barlow made the decision to forge a new Oregon Trail route over Mt Hood in 1846—this put the future city of Sandy on the map. It became the preferred route for settlers traveling over the Cascade Mountains.

The Barlow Road was reshaped into the Mt Hood Loop Highway in the 1920s, ushering in an era of modern travel and bringing countless travelers to Sandy.

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date 11.11.24 **version** 1
page 4.2 **302**

Surrounded by Riches

Sandy has long benefited from **being at the crossroads** of Oregon's abundant **natural beauty and rich natural resources**.

Located on the west slope of the Cascade Mountains, Sandy sits at the exact midpoint where rich farmlands of the Willamette Valley transition into highly productive mountain forests. This remarkable setting has allowed Sandy to take advantage of all the best resources this region has to offer, including fertile soils, high-quality salmon runs, and abundant trees.

Branching Out

Lush growing conditions around Sandy have sustained generations of businesses based on trees and plants. While logging and wood products

have been staple industries for over 100 years, family farms, plant nurseries, and berry farms of all types have also thrived in the area. Sandy's economy continues to grow as visitors and new residents seek out the city's ideal location between Portland and Mt Hood.

Photo Courtesy:
Douglas-fir and western hemlock trees grow to astonishing sizes around Sandy because of the area's copious rains and mild temperatures.

Photo Courtesy:
Sandy River 1912 - Sandy Historical Society Photo

Photo Courtesy:
1948 Sandy Historical Society Photo

Photo Courtesy:
Steam powered logging "donkey" pulling itself across the Sandy River - About 1920 or earlier - Sandy Historical Society

Photo Courtesy:

Background image: Jonsrud forest and Sandy river viewpoint Oregon state courtesy RG- AdobaStock

Autumn Rains along the Sandy River By Dee- AdobaStock

Crossing the Sandy River

The Sandy River was first named the Quicksand River by Lewis and Clark in 1805 due to thick ash from an eruption of Mt Hood, this name was later shortened to Sandy.

1 exhibit panel
panel dimension 48" x 24"

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page 5.1

need photo credits:

- ① vintage man swinging from crane in forest
- ② man in tree with equipment
- ③ lumber camp

these are probably all courtesy of Sandy Historical Society but we should be sure.


should re-scan:

- ④ lumber truck. there is a shadow of the photographer cast across the image. a high res scan would be a major improvement

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①


Photo Courtesy:
Douglas-fir and western hemlock trees grow to astonishing sizes around Sandy because of the area's copious rains and mild temperatures.



Sandy River 1912 - Sandy Historical Society Photo

②


Photo Courtesy:



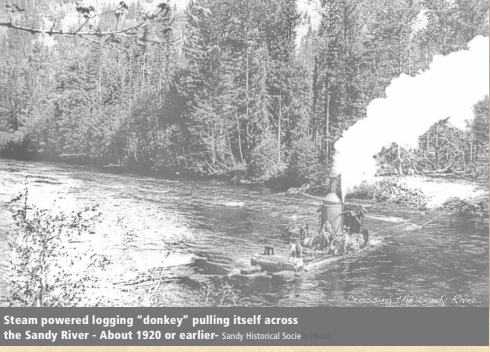
Autumn Rains along the Sandy River by Don Adorstock

The Sandy River was first named the Quicksand River by Lewis and Clark in 1805 due to thick ash from an eruption of Mt Hood, this name was later shortened to Sandy.

④



1948 Sandy Historical Society Photo



Steam powered logging "donkey" pulling itself across the Sandy River - About 1920 or earlier - Sandy Historical Socie

③

Photo Courtesy:

Branching Out

Lush growing conditions around Sandy have sustained generations of businesses based on trees and plants. While logging and wood products have been staple industries for over 100 years, family farms, plant nurseries, and berry farms of all types have also thrived in the area. Sandy's economy continues to grow as visitors and new residents seek out the city's ideal location between Portland and Mt Hood.

Background image- Jonsrud forest and Sandy river viewpoint Oregon state courtesy RG- AdobeStock

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page 5.2 304

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS
PORTLAND DISTRICT
AND THE OREGON STATE HISTORIC PRESERVATION
OFFICE
REGARDING THE BELL STREET AND SE 362ND
AVENUE EXTENSIONS PROJECT, SANDY, OREGON**

WHEREAS, the United States Army Corps of Engineers (USACE) administers issuance of permits pursuant to Section 404 of the Clean Waters Act, 33 U.S.C. § 1344, and;

WHEREAS, the City of Sandy (permit applicant) plans to carry out the Bell Street and SE 362nd Avenue Extensions project (undertaking) that requires a permit pursuant to Section 404 of the Clean Water Act from the USACE in compliance with Section 106 of the National Historic Preservation Act (NHPA); and

WHEREAS, the undertaking consists of building a roadway connection between Bell Street SE 362nd Drive outside of the Sandy city limits in Clackamas County; and

WHEREAS, USACE has defined the undertaking's permit area as the proposed road alignment, extending 30 to 60 meters (m) (100 to 200 feet [ft]) from either side of the road centerline, and a 1.5-acre off-site mitigation area in Sandy Bluff Park and Dog Park; and

WHEREAS, pursuant to 36 CFR part 800, regulations implementing Section 106 of the NHPA, and 33 CFR part 325, Appendix C, Processing of Department of the Army (DA) Permits: Procedures for Protection of Historic Places, the USACE is required to take into account the effects of Federally permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of permits for the undertaking and to consult with the State Historic Preservation Officer (SHPO); and

WHEREAS, USACE determined, and the SHPO concurred, that the Jonsrud/Lundeen Farm is eligible for listing in the National Register of Historic Places; and

WHEREAS, USACE determined, and the SHPO concurred, that the undertaking will have an adverse effect on the eligible Jonsrud/Lundeen Farm; and

WHEREAS, USACE, in consultation with the City of Sandy, has reviewed the project design to ensure that physical impacts to the Jonsrud/Lundeen Farm are minimized, and that historic farmstead buildings will be avoided by the project; and

WHEREAS, USACE, in consultation with the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of Siletz Indians of Oregon, and the Confederated Tribes of Warm Springs Reservation of Oregon determined appropriate levels of effort to identify and evaluate historic properties in the permit area; and

WHEREAS, USACE has consulted with the City of Sandy, the Sandy Historical Society, Confederated Tribes of the Grand Ronde Community of Oregon, Confederated

Tribes of Siletz Indians of Oregon, and Confederated Tribes of Warm Springs Reservation of Oregon regarding the effects of the undertaking on historic properties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), USACE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation on June 28, 2022, and the ACHP has chosen *not to* participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, USACE and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

I. STIPULATIONS

USACE shall ensure that the following measures are carried out:

A. Onsite Interpretation. The City of Sandy will install a minimum of four interpretive panels adjacent to the sidewalk to be constructed on the south side of Bell Street and the west side of 362nd Ave. The panels will be a minimum size of 2 ft by 4 ft and will be placed so the subject of the panel is observed from the panel location. The specific content, layout, and installation location of the panels will be determined through consultation with SHPO, and is subject to draft review per Part II, below.

- a. **One panel will detail** significant existing features of the Jonsrud/Lundeen farm, such as the barn, orchard, pastures, and the Craftsman Bungalow. The features will be identified and graphically depicted on a map accompanied by a narrative describing the Jonsrud/Lundeen farm. The narrative will incorporate elements from the Cultural Resources Survey performed by Archaeological Investigations Northwest, Inc., and personal recollections from Lundeen family members.
- b. **Other panels will provide historical context** relating the development of the Jonsrud/Lundeen farm and Sandy area at the end of the 19th century and the beginning of the 20th century. Photographic resources and other historic material would be provided from the Sandy Historical Society <https://www.sandyhistory.com/> collection and the Lundeen family.
- c. As the proposed undertaking is a transportation project, **one panel will discuss the role of the Barlow Road and the Mt. Hood Loop Highway in the development of Sandy and the transition from a rural, resource-based economy to one based on tourism and recreation.**
- d. Panels would be constructed of durable all-weather and vandal resistant materials similar to existing interpretive displays at other public sites in Sandy. Signs would be accessible to pedestrians, including mobility-impaired individuals using the sidewalk.
- e. Panels will be installed in the public right-of-way and will not be subject to removal as they might be if placed on private property. The panels will be maintained by the City of Sandy.
- f. Proof of installation is required before the stipulation will be considered complete.

II. REVIEW OF MITIGATION MATERIALS

USACE shall provide SHPO at least one opportunity lasting a minimum of thirty (30) calendar days to comment on the completeness of the mitigation materials specified in Stipulation I of this document before final submission. Comments will also be solicited from consulting parties that provide written notice of interest in contributing to the development and review of mitigation materials. Comments provided by the signatories and interested consulting parties shall be taken into consideration within the limits of the project as described in the stipulations.

IV. POST-REVIEW DISCOVERIES

In the event any additional cultural resources are encountered or previously unanticipated effects on historic properties found, City of Sandy will cease activities in the area and an appropriate cultural resources professional will be contacted to evaluate the discovery.

IV. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:

A. Forward all documentation relevant to the dispute, including USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. USACE will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

V. AMENDMENTS

Any signatory may request that this MOA be amended by submitting such a request to USACE in writing. USACE shall consult with the signatories and consulting parties for up to thirty (30) calendar days, or another time period agreed to by all signatories in writing, concerning the necessity and appropriateness of the proposed amendment. At the end of the consultation period USACE shall provide an amended MOA for signature by the signatories and consulting parties or a written statement describing why USACE chose not to pursue an amendment to this MOA. Amendments shall be effective on the date a copy of the MOA is signed by all of the signatories and filed with the SHPO.

VI. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an

amendment per Stipulation V, above. If within thirty (30) days of initial consultation on termination, or another time period agreed to by all signatories, an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Termination shall be effective the day USACE receives written notification.

Once the MOA is terminated, and prior to work continuing on the undertaking, USACE must execute an MOA pursuant to 36 CFR § 800.6, or must request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. USACE shall notify the signatories as to the course of action it will pursue within thirty (30) calendar days of the termination of this MOA, or within another time period agreed to by all parties in writing.

VII. DURATION

This MOA is effective on the date a copy of the MOA signed by all signatories is filed with the SHPO. The MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation V, above.

IX. EXECUTION

Executions of this MOA by USACE and SHPO and implementation of its terms evidence that USACE took into account the effects of the undertaking on historic properties under 36 CFR part 800.

SIGNATORIES:

United States Army Corps of Engineers

_____ Date

MICHAEL D. HELTON, PMP
COL, EN
Commanding

Oregon State Historic Preservation Office

_____ Date

[insert name and title]

INVITED SIGNATORIES:

City of Sandy

 Digitally signed by Jennifer Coker
DN: C=US,
E=jcoker@ci.sandy.or.us,
CN=Jennifer Coker
Date: 2022.07.13 15:23:59-07'00' _____ Date 7/13/2022
Jennifer Coker, PE Public Works Director

CONCURRING PARTIES:

Sandy Historical Society

_____ Date

Title _____

Notes:

** This document assumes that the term "signatory" has been defined in the agreement to include both signatories and invited signatories.*

*** Remember that the agency must submit a copy of the executed MOA, along with the documentation specified in Section 800.11(f), to the ACHP prior to approving the undertaking in order to meet the requirements of Section 106.*



STAFF REPORT

Meeting Type: City Council Meeting
Meeting Date: 12/6/2024
From: Gregory Brewster
Subject: IGA Approval: On-Call Construction for SandyNet/CBX Colorado and Gunderson Road Fiber Project

DECISION TO BE MADE:

Whether to enter into an intergovernmental agreement (IGA) with Clackamas County to provide on-call construction service for remaining pending drop construction under the SandyNet/CBX Colorado and Gunderson Rd Fiber-to-the-Home Project (Project).

PURPOSE / OBJECTIVE:

The objective of this IGA is to help complete the backlog of planned drop construction that has resulted from the Project. CBX must allocate its remaining American Rescue Plan Act (ARPA) funds by the end of the 2024 calendar year, and currently has no other bidders lined up to complete its remaining work. The SandyNet department has fifteen active requests under the Project for service. SandyNet is currently waiting on fiber optic construction from CBX to be completed before those requests can be fulfilled.

BACKGROUND / CONTEXT:

In 2022, Sandy City Council approved an IGA between the City of Sandy's SandyNet department and Clackamas County's CBX department to be an Internet Service Provider (ISP). The Project IGA was a modification of an already existing pilot project IGA from 2019, where SandyNet operated as an ISP and offered internet to cabins on forest service roads 29, 31, 35, 35 A&B near Rhododendron.

Under each IGA, CBX has acted as the fiber owner and operator, and SandyNet has acted as an ISP that has provided the internet service to individual premises. CBX operates an open access network, and SandyNet has acted as one of many potential ISPs that can provide service in CBX project areas.

In 2022, the State of Oregon offered counties and cities funds from ARPA, which were aimed at providing relief and stabilization during and after the coronavirus pandemic. CBX received funding to help close gaps in broadband access within Clackamas County. A portion of those funds went towards the current Project. Those funds must be allocated by the end of the 2024 calendar year.

CBX has entered into several on-call contracts to complete the fiber optic work for the Project. To date, there are 15 unserved sites still needing fiber optic brought up to the house. CBX is unable to advertise and enter into any new on-call contracts before the ARPA allocation deadline. CBX reached out to the City to ask if SandyNet would be interested in helping complete 8 of the remaining 15 locations. Under

the existing IGA, SandyNet is strictly an ISP, and has no business engaging in construction for the Project. However, SandyNet has the opportunity to act as a contractor on behalf of CBX and perform construction for the remaining 8 sites.

KEY CONSIDERATIONS / ANALYSIS:

Staff has negotiated an IGA with Clackamas County that would allow SandyNet to construct the remaining drops for CBX. This IGA has been approved by both parties' attorneys, and both parties have agreed to all terms and costs for the agreement.

Rationale for Entering into the IGA

The IGA provides the opportunity for SandyNet to generate additional revenue from the project as a one-time project. Alternatively, if the City does not enter into this IGA, the outstanding work will likely fall to CBX to complete in-house. There is no current timeline for CBX to complete that in-house construction. Staff estimates that the timeframe would be between six months to a year to complete the remaining 8 sites. CBX funds for hiring another contractor would not come from any ARPA funds, given the allocation deadline. The likelihood of CBX hiring another contractor is low given that the work would be unfunded.

The two main considerations for Staff's desire to enter into this contract are: first, to finish the backlog of orders. Most of the remaining drops to be constructed are long distance drill shots, and many of the remaining orders have been in place between one and two years. While CBX is the fiber owner and operator, the poor experience perceived from slow construction has been difficult to separate between County and City. Staff has struggled to explain delays on behalf of the County. This issue has lessened over the past four months as contractors have completed their drop lists, however the issue may resurface if the work falls back on the County to complete in-house. Staff believes that it can help manage expectations better and provide a better experience if the City were to take on the extra work. The second consideration regards the revenue that would be generated under the Project. Completion of the entire backlog would generate over \$160,000 in revenue to the City.

Use of County Equipment

The City has negotiated a lower price for the construction work, in exchange for utilizing different pieces of CBX equipment, most notably their Directional Drill which is twice as powerful than the one owned by SandyNet. Included in that reduced bore price is the removal of wear/tear and depreciation on SandyNet equipment. There is also additional cost savings since the CBX directional drill is capable of drilling twice as far as SandyNet's drill, reducing setup/teardown time and excavation between each drill shot.

The City would only be placing conduit for the project. The County will provide plans, materials, equipment and inspect, pull, and splice any fiber necessary to make the drop ready for an internet installation.

Right to Decline Work

It is important to note that the City reserves the right to reject any and all work presented by the County. If any work is cost prohibitive or otherwise not in the interest of the City to complete, the City can simply reject the work.

BUDGET IMPACT:

The project calls for 5180ft of drilling. Based on prior drill work performed at similar distances, SandyNet expects the entire project to take 276 hours of work (two months). The project will require 2.5 FTE. After including expected costs, like fuel and wear and tear on vehicles, the expected expenses for SandyNet to complete this work are less than \$50,000. The reimbursement for SandyNet services is represented under Exhibit A of the proposed IGA. The maximum revenue generated per the IGA is set to not exceed \$160,000.

RECOMMENDATION:

With consideration to the time constraints for ARPA allocation, the 2:1 profit/expense ratio, the reduced risk to the City as is defined under the IGA, the usage of equipment sharing, and finally the virtual guarantee that SandyNet will be the ISP for each constructed site, Staff believes that this project is financially feasible, and in line with the departments prior agreements and interests.

The SandyNet Advisory Board endorsed this IGA after reviewing during the November 21st meeting.

Staff respectfully requests that Council sign into an IGA with Clackamas County for on-call construction services for the Colorado and Gunderson Rd. Project.

SUGGESTED MOTION LANGUAGE:

"I move to authorize the City Manager to execute an intergovernmental agreement with Clackamas County to provide on-call construction services for the Colorado and Gunderson Road project, as provided in the meeting packet."

LIST OF ATTACHMENTS / EXHIBITS:

- Intergovernmental agreement between Clackamas County and the City of Sandy
- List of drops to be completed

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF SANDY**

THIS AGREEMENT (“Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the City of Sandy (“City”), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, authority is conferred under ORS Chapter 190 to local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, the County desires to contract out work to the City to perform on-call or as needed fiber drop construction and management services for the Colorado and Gunderson Rd Fiber-to-the-home project (“Project”).

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution by both Parties, and shall expire twelve (12) months from the Agreement execution, or as otherwise terminated by the parties.
2. **Scope.** The Parties acknowledge and agree that they have entered into other IGAs involving fiber services. However, this Agreement is limited solely to the Project. Any rights or obligations between the Parties are mutually exclusive from any other existing projects, agreements, or IGAs.
3. **Access.**
 - A. **County ROW.** County permits City and its employees and contractors to access County ROW in connection with City’s completion of the Project.
 - B. **Private Property.** City will be responsible for obtaining all needed easements, rights of entry, or other access agreements needed for the City, and its employees and contractors, to enter onto private property in connection with its performance of the Project.
 - C. **General Access.** All other easements, leases, licenses, franchise authorities, authorizations, or other agreements needed to secure access rights in connection with the performance of this Agreement are the sole responsibility of County.
4. **Rights and Obligations of the City.**
 - A. Upon written request from the County and acceptance by the City, City shall construct the necessary underground fiber-to-the-home infrastructure from County right-of-way (ROW) to the subscriber premises as part of the Project (“FTTH Construction”). The County shall remain the owner of any infrastructure constructed by the City. The City shall be reimbursed for any work that is performed in accordance with Section 6, below. Infrastructure shall be installed per commercially reasonable standards, in a good workmanlike manner, and in accordance with applicable law. Prior to City performing the FTTH Construction, City will consult with County to ensure that the specifications of the infrastructure are compatible with the County’s systems and requirements. Prior to the City performing the FTTH

Construction, the County shall ensure the following construction and installation requirements are satisfied at each property:

- a. A path acceptable to the City is provided from the County infrastructure/ROW to the site demarcation point for service. A path acceptable to the City is provided for the fiber optic cable from the point of entry into the site to the termination panel or CSP (Customer Splice Point) and into the home demarcation that complies with all applicable building, electrical, fire and related codes.
 - b. The City and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, have reasonable ingress and egress into and out of the properties and buildings in connection with the provision and construction of service.
- B. Following construction and County inspection and acceptance of the installation of such infrastructure, the City shall no longer maintain and or repair any FTTH Construction, except as expressly set forth in Section C below.
 - C. City shall be responsible for correcting any FTTH Construction that is defective in workmanship for one (1) year following City's installation thereof. As used herein, "defective" means any work not completed in accordance with County's specifications or applicable law. City shall repair or replace, at its sole cost, any defective FTTH Construction during such time period. City shall not be responsible for future maintenance to the FTTH Construction following such time period.
 - D. The City reserves the right to deny to perform any Project-related work that it considers in its sole discretion to not be in the interest of the City, including but not limited to factors such as: cost, environment, complexity, or safety.
 - E. The City shall not enter any subcontract for any of the work scheduled under this Contract without obtaining the prior written approval of the County.
 - F. The City shall notify the County at least two weeks prior to scheduled vacation or other time away that will result in the City's inability to perform requested work. Notification of time unavailable shall be sent by email to the County's designated liaison.
5. **Rights and Obligations of the County.**
- A. From time to time, the County may request that the City complete certain FTTH Construction work by a written request setting forth a scope of work, project site(s), project complexities, timelines, and any other necessary information that County believes is needed for City to appropriately assess the FTTH Construction work. City shall review the request and either accept or reject the requested FTTH Construction work. All provisions and covenants contained in said accepted written requests are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth. Any conflict between this Agreement and accepted written requests (if any) shall be resolved first in favor of this Agreement.
 - B. The County shall be the owner of all FTTH Construction following successful inspection and acceptance of work.

- C. Upon completion by City of the respective FTTH Construction work, the City shall invoice the County for reimbursement in accordance with Section 6, below. County shall issue payment within 30 days of receiving an invoice.
 - D. County may provide materials or equipment for City to utilize during the project. Any materials or equipment not directly procured by the County shall be approved by County prior to City purchase. County shall reimburse City upon invoice for purchased materials and equipment.
 - E. The County and City shall mutually agree on dates which the respective FTTH Construction work will be performed. Once dates are agreed upon and publicized, they cannot be changed without the written consent of the County.
6. **Consideration.** The maximum amount County may pay City for performing FTTH Construction, from available and authorized funds, shall not exceed the sum of \$160,000. Consideration is on a time and materials basis in accordance with the schedule of fees attached hereto as Exhibit A and incorporated by this reference herein. Because the FTTH Construction is on-call or as-needed, and exact amount of FTTH Construction is unknown, nothing herein shall be construed as a promise by County to pay City the entire \$160,000 authorized by this Agreement.

7. **Representations and Warranties.**

- A. *City representations and warranties:* City represents and warrants to County that City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of City enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

8. **Termination.**

- A. The County and City, by mutual written agreement, may terminate this Agreement or any individual accepted request for FTTH Construction work at any time.
- B. Either Party may terminate for its convenience, upon thirty (30) days advance written notice to the other Party. Upon termination for convenience, the terminating Party shall pay the non-terminating Party any undisputed amounts incurred as of the date of notice of termination.
- C. Either the County or City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, or other time as may be agreed between the parties in writing, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the

default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

- D. The County or City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow that Party, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited, or a Party is prohibited from paying for such work from the planned funding source.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

9. **Indemnification.**

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon the negligent or willful acts of City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which City has a right to control.

10. **Insurance.** The Parties agree to maintain insurance levels sufficient to cover the obligations agreed to in this Agreement.

11. **Party Contacts**

- A. Duke Dexter or his designee will act as liaison for the County.

Contact Information:

Duke Dexter
 121 Library Court
 Oregon City, Oregon 97045
ddexter@clackamas.us
 Fax: 503-655-8255

Greg Brewster or his designee will act as liaison for City.

Contact Information:

Greg Brewster
39250 SE Pioneer Blvd
Sandy, Oregon 97055
gbrewster@ci.sandy.or.us
503-489-0937

- B. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
- C. Any notice required to be provided under this Agreement shall be provided to the Party Contact at the address specified herein. Notices shall be made by personal service, in which case they are effective on the date of service, or by certified mail, in which case they are effective on the date of delivery, or if delivery is refused, upon the date of delivery refusal.

12. **FEDERAL CONTRACTING REQUIREMENTS.** County intends that all or a portion of the consideration paid to City is eligible for reimbursement by one or more federal agencies. This Agreement is subject to the additional terms and conditions, required by federal law for a federal award, set in Exhibit B, attached hereto and incorporated by this reference herein. All terms and conditions required under applicable federal law for a federal award including, but no limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.

13. **General Provisions**

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of

any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period each Party shall permit the other Parties’ authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and any debt limitations contained in any City or County charter, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties regarding its subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **Safety and Health Requirements.** Work performed under this Agreement shall comply with all federal Occupational Safety and health Administration (“OSHA”) requirements and with all Oregon safety and health requirements, including those of the State Workers’ Compensation Division.

- K. **Project Information.** The Parties will attempt, in good faith, to jointly agree upon any news or press release related to the Project.
- L. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Assignment.** Neither Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole and absolute discretion. One Party's consent to any assignment shall not relieve the other Party of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** The provisions of Sections 7, 9, and 13 (A), (B), (C), (D), (E), (F), (G), (H), (L), (O), (Q), (S), and (T), shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of City's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, strikes, pandemics, or war.
- S. **Confidentiality.** The Parties and their employees or agents may, in the course of this Agreement, be exposed to or acquire material identified as confidential information. Such information shall be deemed confidential information of the Party identifying it as such ("Confidential Information"). Subject to Oregon public records laws and regulations, the Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that each Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement or required by law.
- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Sandy

Chair, Board of County Commissioners

By:
Its:

Date

Date

Recording Secretary

Approved as to Form:

 11/26/2024

Exhibit A
CBX DROP COSTS FOR CITY OF SANDY CONSTRUCTION

Note: The costs below do not reflect materials. All materials shall be provided by CBX for SandyNet to install.

Drop Construction	Cost Per Foot
Boring - Drop Rolled Conduit (3/4" – 1")	\$37.00
Boring – Mainline Rolled Conduit (1.25" – 2")	\$42.00
Boring – Drop Rolled Conduit (3/4" – 1") w/CBX Directional Drill	\$23.00
Boring – Mainline Rolled Conduit (1.25" - 2") w/CBX Directional Drill	\$32.00
Trenching – Drop Rolled Conduit (3/4" – 1")	\$17.00
Vault Placement (24x36x24)	\$394.80
Vault Placement (17x30x24 or smaller)	\$354.11

Exhibit B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, “Contractor” means **City of Sandy**, a political subdivision of the State of Oregon, and “County” means **Clackamas County**, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies. This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.

2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.

3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

4. During the performance of this Contract, the Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment

without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in

every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. Compliance with the Davis-Bacon Act. If applicable, all transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.
6. Compliance with the Copeland "Anti-Kickback" Act.
 - a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the Contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
7. If this Contract involves a federal award that meets the definition of a “funding agreement” under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
8. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
9. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.
10. Contractor shall comply with 2 CFR Part 180 (including executive orders 12549 and 12689). These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible

under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

11. **Record Retention.** Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
The Contractor agrees to provide the federal administrator or their authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the approved federal administrator, including the Comptroller General of the United States.
12. **DHS Seal, Logo, and Flags:** Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
13. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
14. **No Obligation by Federal Government:** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
15. **Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this

Contract.

16. Contractor will comply with all applicable requirements of 2 CFR 200.216, 2 CFR 200.321, and 2 CFR 200.322.
17. Procurement of Recovered Materials (Reference 2 CFR 200.322): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
18. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and

that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

House Drops for Colorado

House Number	Street	UG Dist 1"	UG Dist 2"	Total Dist	Bore 1"	Bore 1" CBX bore machine	Bore 2"	Bore 2" CBX Bore machine	24" vault	17" vault	total
					\$37.00	\$23.00	\$42.00	\$32.00	\$394.80	\$354.11	
34***	Colorado	200		200		\$4,600.00					\$4,600.00
34***	Gunderson	120	1050	120		\$2,760.00		\$33,600.00			\$36,360.00
35***	Gunderson	120	1100	120		\$2,760.00		\$35,200.00			\$37,960.00
34***	Colorado	750		750		\$17,250.00					\$17,250.00
34***	Colorado	750		750		\$17,250.00					\$17,250.00
34***	Colorado	400		400		\$9,200.00					\$9,200.00
35***	Colorado	520		520		\$11,960.00					\$11,960.00
34***	Colorado	1040		1040		\$23,920.00					\$23,920.00

\$158,500.00



STAFF REPORT

Meeting Type: City Council Meeting
Meeting Date: 12/16/2024
From: Gregory Brewster
Subject: Contract Approval: City of Sandy Door Access System

DECISION TO BE MADE:

Whether to authorize the City Manager to enter into a contract with Paladin Technologies Inc., to install a city-wide door access control system.

PURPOSE / OBJECTIVE:

The purpose of this project is to help secure city facilities by granting access to zones of city buildings using an RFID control system with badges. Additionally, the system will unify existing door controllers to utilize a single city-wide system.

BACKGROUND / CONTEXT:

The City owns several facilities that have typically been maintained and repaired by their respective departments. As Sandy's population has now grown beyond 13,000 and employees over 100 staff members, the City has begun the process of centralizing many of those previously decentralized services and operations.

Examples of prior centralization includes unified utilities, such as fire alarm, intrusion alarm, voice systems and services. Additionally, individual facility repairs, and maintenance are now brought under centralized management. Telecommunication and IT systems have long been centralized, including camera and surveillance systems. As this trend continues, the need for centralized physical security and monitoring of doors, gates, fences, and other physical ingress/egress points is overdue.

Additionally, as departments have grown, facilities have started to run out of extra space, leading to shared storage and working spaces at several City of Sandy facilities. Some facilities already contain door access control systems but lack a single uniform way to manage and control badges, requiring those with broad access across City facilities to use several different cards and keys.

Contractors and other short-term agreements requiring access to city facilities have also become an issue when assigning or revoking access to sites and facilities. Existing methods make it difficult to appropriately restrict access and or to grant temporary access for individuals or groups.

The final concern involves auditing and verifying that only authorized individuals have access to their established locations. Secured facilities and rooms currently require additional levels of logging or authentication to verify that a site or room is secured. Some departments require more control over

access to their facilities than others, which has led to silos between departments. The ability to lock down a building, or restrict public access to staff rooms, such as break rooms, a judge's chambers, or secure parking lot, contributes to a sense of security among staff.

KEY CONSIDERATIONS / ANALYSIS:

Staff created and posted an RFP requesting bids from qualified vendors to identify a door access system and bill of materials to construct that system. Staff received six responses for the RFP. Of those six responses, three were selected for a second interview. Staff evaluated each response and issued an intent-to-award to Paladin Technologies Inc., who was the bid winner. Staff has determined that Paladin has the relevant and necessary skills to complete the project.

Each respondents' bids were scored on the basis of the firm's profile, history, relevant experience, project scope, price, and references. Paladin was the lowest of the three finalist bids, which were: Paladin Technologies, \$135,108.07; Cache Valley Electric (w/o optional doors), \$164,092.72; and IES Communications (w/o optional doors), \$215,005.56.

The project scope includes installing a new door access systems at City Hall, adding additional locks to the Sandy Public Library, replacing the old system at the Operations Center and upgrading the existing system at the Sandy Police Department, while bringing everything under a service contract. The Community Center has been excluded from this bid, because of the cost and the additional door work required to cover a single exterior door. The selected system by Paladin can be expanded to cover the Community Center in a future project.

Paladin is expected to handle all operations, while the City's IT department manages Paladin. Paladin will manage all subcontractors. The projected timeline for completion is between 2-3 months from the start date.

BUDGET IMPACT:

As stated above, the project is expected to cost \$135,108.07. Annual recurring costs for a maintenance support contract is expected to be less than \$2,000.

Funds are available in the current budget to cover this expenditure. The Urban Renewal Agency Budget has \$100,000 set aside for City Hall improvements. These safety/security upgrades are expected to cost approximately \$40,000 for City Hall. The remaining expenses will be paid for from the Facility Maintenance Internal Service Fund, which has approximately \$360,000 available for improvements and upgrades to existing City facilities.

RECOMMENDATION:

Staff respectfully requests that Council authorize the City Manager to enter into a contract with Paladin Technologies Inc. to install and build out of a city-wide door access control system.

LIST OF ATTACHMENTS / EXHIBITS:

- Paladin Technologies Bid



City of Sandy - Access Control RFP R.2

Client: City of Sandy

PTI Rep: Nate Brady

Contact: Greg Brewster

Proposal Date: 12/6/2024



Project Description & Investment

Name: City of Sandy - Access Control RFP

Site

City of Sandy City Hall
39250 Pioneer Blvd
Sandy 97055

Billing

City of Sandy
39250 Pioneer Blvd,
Sandy 97055

Paladin Technologies

Nate Brady
P: +1 (971) 271-0250
E: nbrady@paladintechologies.com

Client Contact

Greg Brewster
P: 503-489-0937
E: gbrewster@ci.sandy.or.us

Notes & Exclusions for all Pricing

The following notes and exclusions apply to this bid:

- Paladin is assuming the cabling and locking hardware on existing access control is operational and any faults found will result in change order.
- Access Control server to be supplied by City of Sandy.
- As the Ops Center front door does not exist yet, we are not including cost of locking hardware on our proposal but will agree upon a cost once the City has selected the door type for this location.
- All notes, scope, and exclusions noted in document titled “City of Sandy Access Control Proposal – Paladin Technologies” dated 10/4/2024 apply to this updated proposal

City of Sandy - Access Control RFP Summary

Proposal Date: 12/6/2024

This Quotation is confidential. Pricing is valid for 30 days unless otherwise noted.

Currency: All Items quoted are in USD.

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Financial Summary

Summary	Total
Police Department	\$29,602.43
Labor	\$12,818.26
Material	\$16,784.17
Ops Center	\$21,062.93
Labor	\$11,738.26
Material	\$9,324.67
Library	\$27,337.11
Expense	\$10,135.83
Labor	\$10,352.80
Material	\$6,848.48
City Hall	\$37,561.85
Expense	\$15,665.71
Labor	\$12,512.80
Material	\$9,383.34
Other Costs	\$19,543.75
Expense	\$17,125.00
Material	\$2,418.75
Total	\$135,108.07

* Plus Applicable Taxes

Detailed Breakdown

Scope	Item Type	Part Number	Description	QTY	Extended Price
Police Department	Material	LSP-CTX4DR	LSP-4DR PRE-WIRED CTX, SINGLE VOLTAGE MERCURY POWER SYSTEM. PRE-WIRED FOR TWO (2) LENEL BOARDS	1	\$425.00
Police Department	Material	LNL-R10320-05TB	Multi-technology Reader	18	\$4,162.50
Police Department	Material	LNL-X2220	Intelligent Dual Reader Controller powered by 12	1	\$1,958.75
Police Department	Material	LNL-1320-S3	Dual Reader Interface Module (Series 3 Supports OS	7	\$4,970.00
Police Department	Material	LSP-16DR-E6M1	Enclosure, 16 Door, 30H X 23W x 6.5D	1	\$1,520.00
Police Department	Material	9215689	TRANSIT ULTIMATE 33FT READER	1	\$3,111.08
Police Department	Material	9882480	Window Button AVI Tag with Switch	10	\$350.00
Police Department	Material	NP7-12	BATTERY 7 AMP 12 VDC	6	\$160.02
Police Department	Material	6644-1	RESISTOR 2-1K 1/8 WATT	34	\$126.82
Ops Center	Material	LNL-X2220	Intelligent Dual Reader Controller powered by 12	1	\$1,958.75
Ops Center	Material	LNL-1320-S3	Dual Reader Interface Module (Series 3 Supports OS	4	\$2,840.00
Ops Center	Material	LSP-8DR-E4M1	LSP-8DR, E4M1 24H X 20W ENCL WITH DOOR MOUNT, FITS	1	\$907.50
Ops Center	Material	LSP-CTX4DR	LSP-4DR PRE-WIRED CTX, SINGLE VOLTAGE MERCURY POWER SYSTEM. PRE-WIRED FOR TWO (2) LENEL BOARDS	1	\$425.00
Ops Center	Material	LNL-R10320-05TB	Multi-technology Reader	9	\$2,081.25
Ops Center	Material	446100-500	4 Element Composite Cable Plenum White 500	1	\$561.25
Ops Center	Material	DS160	REQUEST TO EXIT PIRS LIGHT GRY	1	\$77.49
Ops Center	Material	6644-1	RESISTOR 2-1K 1/8 WATT	18	\$67.14
Ops Center	Material	N1178CW-ST	Door Contact, 3/4", Stubby, White	1	\$6.24
Ops Center	Material	NP7-12	BATTERY 7 AMP 12 VDC	15	\$400.05
Library	Material	LSP-8DR-E4M1	LSP-8DR, E4M1 24H X 20W ENCL WITH DOOR MOUNT, FITS	1	\$907.50
Library	Material	LNL-X2220	Intelligent Dual Reader Controller powered by 12	1	\$1,958.75
Library	Material	LNL-1320-S3	Dual Reader Interface Module (Series 3 Supports OS	2	\$1,420.00
Library	Material	LNL-R10320-05TB	Multi-technology Reader	5	\$1,156.25
Library	Material	DS160	REQUEST TO EXIT PIRS LIGHT GRY	3	\$232.47
Library	Material	6644-1	RESISTOR 2-1K 1/8 WATT	10	\$37.30
Library	Material	N1178CW-ST	Door Contact, 3/4", Stubby, White	5	\$31.20
Library	Material	446100	4 Elem Comp Cable CMP Wht Jkt	1	\$1,025.00
Library	Expense	PTI-Subcontractor US	Partner Services	1	\$3,125.00
Library	Material	NP7-12	BATTERY 7 AMP 12 VDC	3	\$80.01
Library	Expense	PTI-Subcontractor US	Partner Services - Locking	1	\$7,010.83

Paladin Technologies Inc.

{City of Sandy} City of Sandy City Hall // City of Sandy - PDX - Access Control RFP

Scope	Item Type	Part Number	Description	QTY	Extended Price
City Hall	Material	LSP-8DR-E4M1	LSP-8DR, E4M1 24H X 20W ENCL WITH DOOR MOUNT, FITS	1	\$907.50
City Hall	Material	LNL-X2220	Intelligent Dual Reader Controller powered by 12	1	\$1,958.75
City Hall	Material	LNL-1320-S3	Dual Reader Interface Module (Series 3 Supports OS	3	\$2,130.00
City Hall	Material	LNL-R10320-05TB	Multi-technology Reader	7	\$1,618.75
City Hall	Material	446100	4 Elem Comp Cable CMP Wht Jkt	2	\$2,050.00
City Hall	Material	DS160	REQUEST TO EXIT PIRS LIGHT GRY	7	\$542.43
City Hall	Material	6644-1	RESISTOR 2-1K 1/8 WATT	14	\$52.22
City Hall	Material	N1178CW-ST	Door Contact, 3/4", Stubby, White	7	\$43.68
City Hall	Material	NP7-12	BATTERY 7 AMP 12 VDC	3	\$80.01
City Hall	Expense	PTI-Subcontractor US	Partner Services - Locking	1	\$15,665.71
Other Costs	Material	SWS-32ES	OnGuard 32ES Server Software License OnGuard Serv	1	\$665.00
Other Costs	Material	32ES-32RUP	License, 32 Access Readers Upgrade for All 32ES Systems (Max of 64 Readers)	1	\$1,345.00
Other Costs	Material	SWC-32ES	OnGuard 32ES Client Software License OnGuard Clie	1	\$207.50
Other Costs	Material	OCB-A-ES-1	License, ONGUARD Browser Client Bundle A, For 32ES Systems Only, Includes Licenses for (1) ONGAURD Credentials Client and (1)ONGUARD Monitor Client	1	\$201.25
Other Costs	Expense	PTI-Permit US	Permitting	1	\$625.00
Other Costs	Expense	PTI-Subcontractor US	Partner Services - Panel Termination	1	\$9,375.00
Other Costs	Expense	PTI-Conting.Mat. US	INTERNAL ONLY - Project Material Contingency Budget	1	\$5,500.00
Other Costs	Expense	PTI-Freight US	Freight	1	\$1,625.00

Performance Items

AutoCad Plans & Drawing Files	No	Stub Ups & Back Boxes	No
Submittals	No	Back Boxes	No
Permits	No	Conduit	No
System Training	No	Coring	No
Network Cabling & Infrastructure	No	Fire Stopping	No
Telephone Line	No	Patch & Touch-up Paint	No
120vac Power	No	Door/Frame Preparation	No
Locking Hardware	No	Construction Equipment	No
Lift/Boom Rental	No	Fire Alarm Installation & Verification	No
		Fire Pull Station Installation & Verification	No

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Clarifications and Exclusions

- Taxes are excluded unless specifically shown as included in the pricing summary.
- All work to be completed during normal business hours (8:30am to 5:00pm, Monday to Friday, excluding Holidays) unless otherwise noted.
- All prices quoted herein are valid for 30 days unless otherwise noted.
- Any existing equipment, including cable, found to be faulty and in need of repair or replacement to ensure the proper installation and functioning of the equipment covered by this order may result in additional charges.
- If installation workflow is delayed due to a lack of site readiness including but not limited to inaccessibility, incompleteness, or construction, then extra charges may apply.
- Warranty Limitation. Unless otherwise specified, Paladin Technologies warrants the Products and Services from the time of substantial completion against defects in material and/or workmanship for a period of one (1) year in the amount, manner, and conditions indicated herein (“Warranty”).

Proposal Acceptance

I have read the **General Terms and Conditions (Appendix A)** of the sale, understand them fully, and agree to abide by them.

I hereby certify that I am authorized by my company to sign this agreement. Paladin Technologies is hereby authorized to perform the work as specified.

Accepted By: Paladin Technologies

Proposal No. P0033633_01
Accepted By: City of Sandy

Name: _____

Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A - General Terms & Conditions

1. DEFINITIONS AND ENTIRE AGREEMENT

“Customer” means the party named as Client in the attached Project Description & Investment document.

“Paladin Technologies” means Paladin Technologies (USA) Inc.

“Paladin Goods and Services” means the goods and services described in the attached Project Description & Investment document and any schedules attached by Paladin Technologies.

“Quotation” means the agreement between Paladin Technologies and the Customer, comprised of the attached Project Description & Investment document, any schedules attached by Paladin Technologies, and these General Terms and Conditions.

“Site” means the site for the work listed in the attached Project Description & Investment document.

This Quotation may be accepted by the Customer by either signing where indicated in the attached Project Description & Investment document or by issuance to Paladin Technologies of a purchase order or similar document, which will constitute acceptance of these terms and conditions. This Quotation represents the entire agreement between the Customer and Paladin Technologies. No change, modification, amendment, or other agreement about this Quotation will be binding on Paladin Technologies unless agreed to in writing by an authorized Paladin Technologies representative. No Paladin Technologies sales agent or representative is authorized to make any representations, warranties, or agreements, or to bind Paladin Technologies in any way, except for the representations, warranties and obligations provided for in this Quotation. The laws of the jurisdiction where the Site is located, including builders’ lien legislation, will apply to this Quotation and Paladin Technologies will have all rights of a contractor under such builders’ lien legislation.

2. WARRANTY

Paladin Technologies warrants that the services provided by Paladin Technologies and its employees and subcontractors as part of the Paladin Goods and Services will be free from defects in design or workmanship for a period of one (1) year from the date of completion of the installation, provided that:

- (a) the installation remains in ‘as installed’ condition, without any damage, abuse, modification, addition, or alteration by the Customer or any other party; and
- (b) all regular maintenance and inspections as recommended by Paladin Technologies have been performed.

In the event of any defects in such services, Paladin Technologies will immediately upon notification by the Customer make the necessary repairs, at no cost to the Customer.

Paladin Technologies does not make any representation or warranty regarding any goods or equipment forming part of the Paladin Goods and Services; however, Paladin Technologies will assist the Customer to enforce all manufacturers’ warranties applicable to such goods and equipment. On-site service charges may apply in connection with such assistance.

Prior to returning any goods or equipment, a Return Material Authorization (RMA) form must be completed and can be obtained by contacting service@paladintechnologies.com. Shipping, handling, administration, and/or

Paladin Technologies Inc.

{City of Sandy} City of Sandy City Hall // City of Sandy - PDX - Access Control RFP

insurance charges may apply for Paladin Technologies to facilitate product RMA returns and manufacturer repairs.

Except as expressly provided in this Warranty section, Paladin Technologies disclaims all warranties, expressed, implied or statutory, in relation to the Paladin Goods and Services and/or any other goods or services provided by Paladin Technologies to the Customer pursuant to this Quotation, and all such statutory or implied warranties are hereby waived and excluded.

3. PRICING AND PAYMENT TERMS

All pricing provided for in this Quotation is a best estimate only, based upon the information available at the time of quoting. Pricing is valid assuming completion of supply of the Paladin Goods and Services within thirty (30) days from the date of this Quotation. All prices and charges for the Paladin Goods and Services are subject to change due to Site, environmental, economic, and other conditions, including without limitation currency exchange fluctuations and pricing changes by suppliers, and may be modified as determined by Paladin Technologies from time to time.

On approved credit ("O.A.C."), all charges must be paid in full, without any offset, deduction, or delay within thirty (30) days of the date of an invoice. Credit privileges may be revoked at any time at the sole discretion of Paladin Technologies Credit Department or Senior Finance Executives. Interest will apply at 1.5% per month (18% per annum) on any amounts which are not paid in full within such thirty (30) day period, calculated from the date that the invoice was originally issued. A fee of twenty-five percent (25%) of the applicable price provided in this Quotation will be charged for any product returns, if they are returned in their original and unopened packaging within fifteen (15) days of delivery. The Customer will be responsible for, and will pay on demand, all costs incurred by Paladin Technologies in connection with the enforcement of the terms of this Quotation including, but not limited to, travel expenses, court costs, collection agent costs, litigation costs and all legal fees incurred by Paladin Technologies.

All applicable federal, provincial, state, and/or local taxes are payable in addition to the pricing in this Quotation.

For travel outside the municipal boundaries of the cities in which a Paladin Technologies office is located, the applicable hourly charge per Paladin Technologies personnel member and \$1.25 per kilometer per vehicle will be charged from the point of origin to the Customer's Site and return. Where applicable, airfare costs will be billed in addition to the hourly personnel charge.

Incidentals such as freight, disposal fees, equipment rental fees for non-Paladin Technologies owned equipment, per diem/meals, accommodations, parking and airfare will be charged at cost plus ten (10%) percent, where applicable. The Paladin Technologies Bucket Truck rental will be charged out at One Hundred and Twenty-Five (\$125.00) dollars per hour with a two (2) hour minimum.

Paladin Technologies may delay or discontinue the Paladin Goods and Services and/or terminate this Quotation without any liability or obligation whatsoever to Customer if (a) any equipment or component of the Customer's system is altered, modified, changed or moved without written authorization from Paladin Technologies; (b) the Customer defaults under any agreement with Paladin Technologies, including without limitation any default in payment under this Quotation; (c) Paladin Technologies' business and/or operations are disrupted or adversely affected due to causes beyond Paladin Technologies' reasonable control; (d) goods, labour, transportation and/or capital are not readily available; and/or (e) the Customer is or becomes bankrupt, insolvent, makes an

Paladin Technologies Inc.

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assignment for the benefit of its creditors, fails to pay its debts as due, and/or otherwise suspends its business operations. The Customer may not terminate this Quotation unless Paladin Technologies has failed to fulfill its obligations hereunder for a period of thirty (30) days after written notice from the Customer. In the event Customer terminates this Quotation for any reason, the Customer will indemnify Paladin Technologies and save it harmless from any and all losses, costs and expenses associated with such termination, including, but not limited to loss of profit, lost opportunities, direct, consequential, and incidental damages, and injury to goodwill and reputation.

4. CREDIT APPROVAL

Paladin Technologies' obligations under this Quotation are always subject to Paladin Technologies' Credit Policy ("Credit Policy") and the approval by Paladin Technologies' Finance department, at its sole discretion. If credit is not approved, alternative full or partial prepayment methods may be required to proceed. The Customer specifically consents to the collection and use by Paladin Technologies of Customer credit and financial information, including the Customer's credit file with any credit reporting agencies.

5. SITE ACCESS AND CONDITION

The Customer must provide Paladin Technologies and its personnel and subcontractors with access to the Site as and when required, and the Customer is responsible for ensuring that the Site is a safe workplace in conformity with all applicable workers' compensation and workplace safety laws and regulations.

6. RISK

All risks and liability for loss or damage to any goods or equipment forming part of the Paladin Goods and Services will immediately pass to the Customer upon delivery to the Customer or to its carrier. Notwithstanding such passage of risk, in default of payment Paladin Technologies may, without limiting its other rights and remedies, remove from the Site any Paladin Goods and Services which have not been paid for in full.

7. SCHEDULE AND DELAYS

Paladin Technologies will make commercially reasonable efforts to meet the scheduled dates for delivery or installation of the Paladin Goods and Services provided for in this Quotation, subject always to actions, omissions or delays of others or other circumstances beyond the reasonable control of Paladin Technologies. Under no circumstances will Paladin Technologies have any liability or obligation to the Customer or to any other person for any loss or damage resulting from any delay unless such delay was caused solely by Paladin Technologies' breach of this section.

8. INDEPENDENT CONTRACTORS

Paladin Technologies and the Customer are independent contractors, and neither will be considered to be the agent, representative, master or servant of the other party for any purpose whatsoever. Nothing in this relationship will be construed to create a joint venture, partnership, fiduciary or other similar relationship between the parties.

9. LIMITATION OF LIABILITY

Under no circumstances, including any breach by Paladin Technologies of its obligations under this Quotation, any breakdown or non-performance of any equipment or system forming part of the Paladin Goods and Services, or any negligence by Paladin Technologies or any of its employees, agents or subcontractors, will Paladin

Technologies or any of its officers, directors, employees, shareholders or representatives have any liability to the Customer or any of the Customer's officers, directors, employees, shareholders or representatives for any loss, costs, or damages in excess of the aggregate of the amounts actually received by Paladin Technologies from the Customer pursuant to this Quotation, regardless of the form of action or the basis for the claim.

10. CONFIDENTIALITY

This Quotation and its terms, including all pricing terms and the system design, as well as any other information, material or documents provided to the Customer by Paladin Technologies either prior to or after this Quotation has been signed (collectively, "Confidential Information") are to be kept strictly confidential by the Customer and its employees and agents. No disclosure of any Confidential Information may be made to anyone outside the Customer's organization (other than to its professional advisors or as the Customer may be legally obligated to make) without the prior written consent of Paladin Technologies.

Canvass Results Report

Official Ballots

Run Time 3:18 PM
Run Date 12/02/2024

Clackamas County

November 5, 2024 General Election

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Official **Item # 9.**

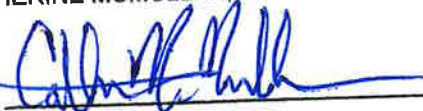
Registered Voters
248910 of 319822 = 77.83%

Precincts Reporting
119 of 119 = 100.00%

City of Sandy, Mayor - Vote for one

Precinct	Kathleen Walker	Laurie Smallwood	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-In	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
107	893	756	1,649	249	0	14	1,912	1,912	2,531	75.54%
108	1,994	1,971	3,965	592	2	25	4,584	4,584	6,345	72.25%
109	0	0	0	0	0	0	0	0	0	0.00%
Totals	2,887	2,727	5,614	841	2	39	6,496	6,496	8,876	73.19%

CERTIFIED COPY OF THE ORIGINAL
CATHERINE MCMULLEN, COUNTY CLERK

BY: 



Canvass Results Report

Official Ballots

Run Time 3:18 PM
Run Date 12/02/2024

Clackamas County

November 5, 2024 General Election

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Official **Item # 9.**

Registered Voters
248910 of 319822 = 77.83%

Precincts Reporting
119 of 119 = 100.00%

City of Sandy, Councilor, Pos. 3 - Vote for one

Precinct	Richard Sheldon	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-In	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
107	965	965	920	0	27	1,912	1,912	2,531	75.54%
108	2,300	2,300	2,235	0	49	4,584	4,584	6,345	72.25%
109	0	0	0	0	0	0	0	0	0.00%
Totals	3,265	3,265	3,155	0	76	6,496	6,496	8,876	73.19%

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CATHERINE MCMULLEN, COUNTY CLERK

BY: 



Canvass Results Report

Official Ballots

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Run Date 12/02/2024

Clackamas County

November 5, 2024 General Election

11/5/2024
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Official Item # 9.

Registered Voters
248910 of 319822 = 77.83%

Precincts Reporting
119 of 119 = 100.00%

City of Sandy, Councilor, Pos. 4 - Vote for one

Precinct	Aryn (Trimble) Ferguson	Kristina Ramseyer	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-In	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
107	574	809	1,383	517	0	12	1,912	1,912	2,531	75.54%
108	1,477	1,984	3,461	1,099	0	24	4,584	4,584	6,345	72.25%
109	0	0	0	0	0	0	0	0	0	0.00%
Totals	2,051	2,793	4,844	1,616	0	36	6,496	6,496	8,876	73.19%

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CATHERINE MCMULLEN, COUNTY CLERK

BY: 



Canvass Results Report

Official Ballots

Run Time 3:18 PM
Run Date 12/02/2024

Clackamas County

November 5, 2024 General Election

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Official Item # 9.

Registered Voters
248910 of 319822 = 77.83%

Precincts Reporting
119 of 119 = 100.00%

City of Sandy, Councilor, Pos. 6 - Vote for one

Precinct	Shawna Lundry	Don M Hokanson	Cast Votes	Undervotes	Overvotes	Miscellaneous Write-in	Vote by Mail Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
107	624	777	1,401	504	0	7	1,912	1,912	2,531	75.54%
108	1,545	1,917	3,462	1,105	0	17	4,584	4,584	6,345	72.25%
109	0	0	0	0	0	0	0	0	0	0.00%
Totals	2,169	2,694	4,863	1,609	0	24	6,496	6,496	8,876	73.19%

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CATHERINE MCMULLEN, COUNTY CLERK

BY: 