



## COUNCIL COMMITTEE MEETING

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City Hall Council Chambers, 298 W Washington  
Tuesday, July 16, 2024 at 5:30 PM

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### AGENDA

#### CALL TO ORDER

#### PUBLIC WORKS COMMITTEE

Alan Nix, chair; Gerald Cook, Dean Parr, David Baskett

1. Discussion of 2023-R-08 Renaming of Northwest Loop to Senator Robert J. Glasgow Loop
- [2.](#) Discussion of Proposals for 2024 WWTP Capital Projects
- [3.](#) Consider Abandonment of Public Water Infrastructure in Creekside Apartment Complex
4. Discussion of Pro-Rata Fees

#### DEVELOPMENT SERVICES COMMITTEE

Gerald Cook, chair; LeAnn Durfey, Maddie Smith, Brandon Greenhaw

- [5.](#) Discussion of B-2 Zoning Permitted and Conditional Uses

#### TOURISM AND VISITORS BUREAU COMMITTEE

LeAnn Durfey, chair; Gerald Cook, Lon Reisman, Brandon Greenhaw

6. Review Stephenville's Lodging Performance Report - Year to Date
7. Main Street Advisory Board Quarterly Update

#### ADJOURN

*Note: The Stephenville City Council may convene into Executive Session on any matter related to any of the above agenda items for a purpose, such closed session allowed under Chapter 551, Texas Government Code.*

***In accordance with the Americans with Disabilities Act, persons who need accommodation to attend or participate in this meeting should contact City Hall at 254-918-1287 within 48 hours prior to the meeting to request such assistance.***

# Public Works Committee Meeting

## STAFF REPORT



**SUBJECT:** WWTP Capital Projects - Budgeted Belt Filter Press Refurbishment  
**MEETING:** Public Works Committee Meeting - 16 JUL 2024  
**DEPARTMENT:** Public Works  
**STAFF CONTACT:** Nick Williams

### RECOMMENDATION:

Staff recommends support of the proposal from Andritz Separation Technologies, Inc. for budgeted repairs to the belt filter press at the wastewater treatment plant.

Staff also recommends support of the proposal from Parkson Corporation for budgeted repairs to the conveyor system that receives solids from the belt filter press.

### BACKGROUND:

The current belt filter press (BFP) has been in operation since 2002 and wear items need routine repairs/refurbishment. The conveyor system that receives the pressed solids from the BFP transfers the product to roll off containers outside of the sludge press building where the sludge is then removed from the plant for landfill disposal. It is also over 20 years old.

### PROPOSAL:

The equipment assessment performed earlier this year on the press noted deficiencies in the equipment and provided a listing of refurbishment parts and service recommendations. Andritz is the sole source supplier for replacement parts, accessories, and service for the BFP. A copy of the sole source supplier letter is attached to this staff report.

The conveyor system adjacent to the BFP uses a trough-shaped belt to catch and transport solids. Parkson Corporation is the sole source supplier for the conveyor system and a copy of the Parkson sole source supplier letter is also attached.

### FISCAL IMPACT SUMMARY:

The quote for the Andritz BFP refurbishment is \$305,345.00 with a lead time of 18-20 weeks.

The quote for the Parkson conveyor system is \$49,963.60 with a lead time of 9-11 weeks.

The FY23-24 budget allocated \$1,520,000 for capital projects at the wastewater treatment plant (WWTP) and the associated repairs and refurbishment of the BFP were specifically included.

The professional services agreement for these capital projects was awarded at the council meeting on November 7, 2023, for \$315,080. Additionally, with the understanding that some funds will be carried to FY24-25 due to design time and equipment lead time schedules, \$300,000 was recently authorized for transfer, at the July 2, 2024 council meeting, from the WWTP capital projects fund to a stormwater fund to address flooding issues on Chamberlin Avenue.

The total proposed cost of rehab work for the sludge pressing operations is \$355,308.60. The remaining FY23-24 funds for capital WWTP projects, if the two proposals are approved, would be \$864,691.40.

Copies of the BFP refurbishment quote and conveyor belt system replacement quote are attached to this staff report.

### ALTERNATIVES:

The following alternatives are provided for consideration:

1. Do not recommend approval the proposals as presented;

### ADVANTAGES:

The work was anticipated and specifically allocated in the approved FY 23-24 budget.

### DISADVANTAGES:

No disadvantages are identified.

### ATTACHMENTS:

[Andritz Sole Source Letter and Andritz Belt Filter Press Refurbishment Proposal](#)  
[Parkson Sole Source Letter and Parkson Conveyor Belt System Quote](#)



July 12, 2024

City of Stephenville  
Attn: Mr. Nick Williams, P.E., CFM  
Stephenville City Hall  
298 W. Washington Street  
Stephenville, TX 76401

**Gina Mongardo Massey**

Inside Sales Manager - NA

SEPARATION

p: 817-419-1790

Gina.Mongardo@andritz.com

Page: 1 (total 1)

## **SUBJECT: SOLE SOURCE SUPPLIER**

Andritz Separation, Inc. is an original equipment manufacturer (OEM) of the liquid/solid separation equipment and hold the sole rights and ownership to the Andritz-Ruthner, Bird Machine, Netzsch, R & B and Humboldt product lines, specifically, the City of Stephenville owns an Andritz Belt Filter Press, Serial Number 0208. We are the sole source for all replacement parts, accessories and service.

All manufacturing components are based on Andritz's proprietary drawings. Commercial items are based on Andritz engineered specifications, they hold the highest manufacturing tolerances and we strive to achieve and maintain the most optimized efficiency in all of our products.

Andritz Separation, Inc. is the exclusive supplier of these components and we do not operate with local distributor networks. We have multiple facilities throughout North America and regional Sales Engineers available to handle all of your service needs. Please feel free to contact Andritz Separation, Inc. directly or visit our website at [www.usa.Andritz.com](http://www.usa.Andritz.com).

Gina Massey

ANDRITZ SEPARATION INC  
Inside Sales Manager – NA  
SEPARATION

ANDRITZ Separation Inc.  
1010 Commercial Blvd. South  
Arlington, Texas 76001 USA  
Direct Phone: 817-419-1790  
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[gina.mongardo@andritz.com](mailto:gina.mongardo@andritz.com)  
[www.andritz.com](http://www.andritz.com)





# BFP Inspection Report and Refurbishment Proposal

## Stephenville, TX WWTP

Date Issued: 4/3/2024

Prepared By: Todd Pratt and Armondo Alvarado

Quote Number: 21001728

Original Job Number: 1193



ENGINEERED SUCCESS



## BFP Refurbishment Quote

Stephenville, TX WWTP

Job #: 1193

2.0M SMX-S8

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### Scope of Supply (On Site Refurbishment)

#### Refurbished parts:

The following existing parts will be inspected and reused during the refurbishment.

- Shower pipes to be disassembled and have new nozzles, wire brush and seals installed. Shower boxes will be cleaned and have new seals installed.
- Tension assembly will be inspected and have new bellows installed.
- Tracking assembly will be inspected and have a new sensor paddle and arm, tracking valve and bellows installed.

#### New Parts:

The following new OEM parts would be supplied during the refurbishment.

- New rolls with bearing housings, bearing and seals.
- Side wall seals.
- Splash guard end and side seals.
- Upper and lower belts.
- Wear strips grid assembly (gravity zone and wedge zone).
- Belt tension bellows.
- Belt tracking bellows.
- Tracking air control valve.
- Tracking sensing paddle and arm.
- Shower box seals.
- Shower bar nozzles.
- Shower bar internal brush and seal kit.
- Doctor blades (1 upper roll and 1 lower roll).
- New electrical switches.
- New pneumatic airlines and fittings if needed.
- New drive motor and gear box.
- Tension bushings.

Attachment Page 1 of 2

ANDRITZ Separation Inc.  
1010 Commercial Blvd. South  
Arlington, TX 76001 USA

Tel: +1 (817) 465-5611  
Fax: +1 (817) 468-3961

Remit to:  
ANDRITZ Separation Inc.  
Dept: 0312  
P.O. Box 120312  
Dallas, TX 75312-0312  
Federal Tax ID Number: 59-3773483

Wire instructions:  
Nordea Bank Finland PLC  
New York Branch  
SWIFT: NDEAUS3N  
Account: 8879433001  
ABA: 026010786



### Site Work:

- Press will be disassembled and then reassembled on site.
- Technicians will be factory trained in the installation and maintenance of ANDRITZ belt presses.
- Technician will have tools such as chains, nylon straps to execute scope of work.
- ANDRITZ will supply transportation of rolls and other components to our service center and back to the customer site.
- ANDRITZ to provide 2 service technicians to be on site for 15 days working, 12 hour shifts including weekends to remove components and install components and confirm machine installation and startup.
- ANDRITZ will remove and dispose of old belt press rolls.
- ANDRITZ is responsible for proper cleaning and gathering of all trash, replacement parts, used oil and grease as it pertains to the work being performed by ANDRITZ personnel and placing it in a customer designated area or dumpster. Customer is responsible for coordinating all disposal. All exceptions must be in writing and confirmed by ANDRITZ prior to the start of a service.
- Additional time required due to delays outside of ANDRITZ control or request for additional work will be charged per the attached service rate sheet.

### Not in Scope:

- No work will be done to the machine frame, grid structure, drain pans and piping.
- Customer will be responsible for repairs and repainting/coating of frame if required.
- No work will be done to the pneumatic or electrical control panel.
- Customer will be responsible for power washing and cleaning of the equipment prior to work.
- Customer will be responsible for disconnecting (and reconnection) of all utilities and walkways from the machine as needed such as sludge, water, compressed air and electrical service.



## Terms and Conditions:

This proposal is based on the attached ANDRITZ Separation, Inc. "Standard Terms and Conditions of Sale".

## Special Provisions:

- All prices quoted in US Dollars,
- Pricing quoted is FOB Jobsite.
- Pricing does not include any local, state or federal taxes, permits, duties or other fees. Any taxes or fees that may apply must be added to the quoted price and paid by the buyer.
- Bonding is not included.

## Validity:

This proposal is valid for 30 days.

The quoted price in this proposal has been calculated based on the current market prices required to manufacture the quoted equipment and services pursuant to regulations, duties and law in effect as of the date of this proposal. The quoted price shall remain firm for a period of thirty (30) days, except and subject to the following. In the event that the introduction of new tariffs, levies, duties, regulations, or any type of legislation by a domestic or foreign government has the effect of increasing the price of the quoted equipment or services, Andritz reserves its right to adjust its quoted price in order to reflect these increases in cost. Nothing in this document, or in any of the applicable contractual documentation shall be construed as a waiver of this right.

## Terms of Payment:

ANDRITZ Separation agrees to the following payment terms (on a net 30 day basis):

- 30% of Order Value upon Approved Purchase Order
- 70% of Order Value upon Shipment

## Delivery:

Equipment readiness for delivery is anticipated to be 18 - 20 weeks from receipt of Approved Purchase Order.

## Pricing:

**Sales Price for BFP refurbishment is \$305,345.00 USD**

Attachment Page 3 of 2

ANDRITZ Separation Inc.  
1010 Commercial Blvd. South  
Arlington, TX 76001 USA

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Account: 8879433001  
ABA: 026010786

# ANDRITZ Separation

***The crisis in Russia/Ukraine has increased and is still expected to increase the pressure on global supply chains, resulting in various impacts/restrictions, including but not limited to, raw material shortages, extended delivery times, unavailability/restricted availability of transport, shipping by land, sea and air, lack of dock lighterage or loading or unloading facilities, lack of manufacturing facilities, lack or restricted availability of labour etc., as well as unforeseeable price increases.***

***The Supplier is unable to receive fixed prices and/or delivery times from its sub-suppliers, as the further developments in Russia/Ukraine and the global impact resulting therefrom are still unforeseeable. The price and delivery times in this proposal are therefore indicative only, and the Supplier reserves its right to adapt the price and/or the delivery times to reflect the impact of further developments after the date of this proposal. Nothing in this proposal can be construed as a waiver of such right.”***





**2024 FIELD SERVICE POLICY AND RATE SHEET**

**Installation and Start-up Assistance**

All the equipment furnished by ANDRITZ Separation Inc. shall be installed and started up by, and at the expense of the purchaser. There is available, however, upon the request of the purchaser, the service of ANDRITZ Separation Inc. field service personnel for consultation and advice in the installation and start-up of ANDRITZ Separation Inc. equipment. This service is provided with the understanding that ANDRITZ Separation Inc. will function only as technical consultants and coordinators in an advisory capacity, and shall have no responsibility for the supervision or the quality of workmanship of such an installation and/or start-up. Such responsibility will be that of the purchaser.

Certain types of ANDRITZ Separation Inc. equipment, such as that with mechanical seals, require the checkout of the equipment by experienced field personnel before the equipment is put into operation. In these instances, the equipment is tagged upon time of shipment. The failure to have proper mechanical check out by ANDRITZ Separation Inc. field personnel will void our mechanical warranty. For the check out, power and all necessary utilities for the operation of equipment must be available.

**Service Rates (Rates/Pricing are in US currency)**

Service Rates are applicable for all the time the field service employee spends on the job. This includes traveling to or from either our designated plant or point of residence of the employee. Any holdover time, i.e. time where the employee is required to stay on the job site because time does not permit travel home, or for the convenience of the customer, shall be at regular rates, listed below:

<b>Description</b>	<b>Standard Hourly Rates</b>	<b>Overtime Hourly Rates</b>
<b>Work:</b>		
Weekday	\$225.75 (Up to 8 hrs.)	\$338.50 (Over 8 hrs.)
Saturday	\$333.00 (Up to 8 hrs.)	\$333.00 (Over 8 hrs.)
Sunday	\$440.00 (Up to 8 hrs.)	\$440.00 (Over 8 hrs.)
Holidays	\$440.00 (Up to 8 hrs.)	\$440.00/ hr. up to 4 hrs.
<b>Travel:</b>		
Weekday	\$162.00 (Up to 8 hrs.)	\$335.00 (Over 8 hrs.)
Saturday	\$238.00 (Up to 8 hrs.)	\$335.00 (Over 8 hrs.)
Sunday	\$312.00 (Up to 8 hrs.)	\$440.00 (Over 8 hrs.)
Holidays	\$312.00 (Up to 8 hrs.)	\$440.00/ hr. up to 4 hrs
Remote Support	\$204.00 1 <sup>st</sup> hr - \$157.50.00/hr additional	.\$335.00 Minimum

**ANDRITZ SEPARATION INC.**

1010 Commercial Blvd. S.  
 Arlington, Texas 76001  
 Tel. (817)465-5611  
 Fax (817)468-3961  
 separation.us@andritz.com

### **Travel & Holiday Service**

If travel and work requirements carry through weekends and holidays, the premium rates above will be charged. (For example, if a customer requires field service personnel to be on site early Monday, necessitating the need to travel Sunday or a Holiday, the Sunday/Holiday rate will be charged. If work continues through a weekend and/or holiday, the Sunday/Holiday rate will be charged.)

### **Cancellation Notice**

In an effort to keep costs down for our customers, service personnel will book advanced, non-refundable tickets as quickly as possible after the request for service is received. This is a conscientious effort to keep costs to the customer, for air travel, as low as possible. If such expenses have been incurred in good faith, and the customer must cancel, we must invoice for those expenses to be fairly reimbursed.

### **Other Considerations**

Because our Field Service employees are away from home for extended periods for most of the year, we feel they should be with their families over the Christmas and New Year holidays. Except for breakdowns or comparable and equally critical service requirements, our personnel are not available at these times.

When our field service personnel travel international and required on site for periods in excess of four weeks, they are allowed to return home to be with their families. The allowable time period is determined on a case-to-case basis. The cost only of transportation to the employee's home and return will be included with the service charges.

It is required that our service personnel have single rooms in first class hotel or motel accommodations where these are available. The charges for all living and travel expense will be for the account of the customer. Travel, if by public conveyance or rented automobile, will be at cost. Travel, if by employee-owned or company owned automobile will be at the rate of US \$ 0.585 per mile plus all toll and parking charges. A 15% administrative fee will apply only to travel and living expenses incurred.

It is the responsibility of the purchaser to provide for all necessary permits, clearances, visas, and other pertinent information required for our personnel to travel to the job site. In the event that public facilities are not available near the job site, it is the purchaser's responsibility to provide the equivalent of first class facilities in single rooms for our personnel at the site. For overseas jobs intended to be of an extended duration in excess of thirty (30) days, special arrangements will be negotiated immediately (and prior to the requirement for personnel to be at the job site) with regard to visits home with their families.



**Service Requirement Notification**

Our objective is to provide the best service possible. Experience has proven that one of the best ways to accomplish this is for our employees to arrive on the job site when they are needed - but not before. Our personnel are in short supply from time to time and personnel with the special skills you may require may not be available on short notice. We request, therefore, that for projects requiring extended service (in excess of thirty (30) days) and/or special skills, ANDRITZ Separation Inc. be given at least sixty (60) days' notice as to when field service personnel are required on site. We also ask that this be confirmed within fourteen (14) days of the start of their services. In other instances, for a shorter duration of service, we request that at least a minimum of ten (10) days' notice be given prior to requirement of our service personnel. After receipt of such advance notice, while we endeavor to comply with all requested time schedules, purchaser should be aware that on rare occasions we might not be able to meet all demands immediately. Negotiations will continue until the best schedule is attained. In the event that emergencies arise, we will work to meet the customers' needs as quickly and as completely as possible.

**Please Note:** If time is scheduled and the customer must cancel on short notice, there is no guarantee of the immediate availability of field service personnel for rescheduling.

**Insurance & Warranty**

ANDRITZ Separation Inc. service personnel are fully covered by Worker's Compensation Insurance. ANDRITZ Separation Inc. makes no warranty either express or implied or by trade usage in connection with the services of its field personnel and shall have no liability direct, indirect or for any loss, damage, injury or expense resulting from or arising out of their services other than by reason of their negligence, and in no event for consequential injury or damage or for any amount in excess of the cost of repair or replacement of specific part damaged by their negligence

Rates Effective -03\_01\_2023

## TERMS AND CONDITIONS OF SALE AND/OR SERVICE

### 1. TERMS APPLICABLE

(a) These Terms and Conditions of Sale and/or Service are the only terms which govern the sale of the products, equipment, or parts and/or the provision of services ("Products" and "Services") pursuant to the quotation or acknowledgement of the Andritz entity supplying the same ("Seller") or Buyer's purchase order or other written document issued by Buyer. These Terms and Conditions of Sale and/or Service control, supersede and replace any and all other additional and/or different terms and conditions of Buyer, and Seller hereby objects to and rejects all such terms and conditions of Buyer without further notification, except to the extent Seller expressly agrees to such conditions in writing. Buyer's authorization for Seller to commence work under the Agreement or Buyer's acceptance of delivery of or payment for any Products or Services covered by this Agreement, in whole or in part, shall be deemed Buyer's acceptance of these Terms and Conditions of Sale and/or Service. The term "Agreement" as used herein means (1) these Terms and Conditions of Sale and/or Service, (2) Seller's quotation or acknowledgment together with any attachment thereto and any documents expressly incorporated by reference, and (3) Buyer's purchase order or other written document issued by Buyer, together with any attachment thereto and any documents expressly incorporated by reference (but excluding any Buyer terms and conditions attached thereto or incorporated therein by reference). In the event of a conflict between any documents forming the Agreement, such documents shall be construed in the above-listed order of precedence.

(b) Prior to Buyer's acceptance of any Seller quotation in which these Terms and Conditions of Sale and/or Service are incorporated, in the event that the introduction of new tariffs, levies, duties, taxes, regulation, or any type of legislation by a domestic or foreign government has the effect of increasing the price of the quoted Products and/or Services, Seller reserves its right to adjust its quoted price in order to reflect these increases in cost. Nothing in this document, or any of the applicable contractual documentation shall be construed as a waiver of this right.

### 2. DELIVERY OR PERFORMANCE; RISK OF LOSS AND TITLE

(a) Delivery or performance dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery or performance. If the parties have agreed to liquidated damages in this Agreement for Seller's delay in achieving certain milestones, (i) the parties acknowledge and agree that Buyer's damages for Seller's delay are difficult to predict with any certainty, and such liquidated damages are not a penalty but a reasonable estimate of Buyer's delay damages; (ii) such liquidated damages shall not exceed an aggregate value of five percent (5%) of the Agreement price and shall be Buyer's exclusive remedy for any delay by Seller in performing any of its obligations under this Agreement; and (iii) Buyer agrees Seller shall not be liable for liquidated damages if Seller's delay in achieving a milestone subject to liquidated damages has not delayed Buyer's ability to use the applicable Products, Software and/or Services.

(b) Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in this Agreement, according to INCOTERMS 2020. If no delivery term is agreed elsewhere in the Agreement, delivery of the Products will be made FCA shipping point (INCOTERMS 2020). Title to the Products shall transfer to Buyer upon final payment therefor.

### 3. WARRANTY

(a) Product Warranty. Seller warrants to Buyer that the Products manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months from delivery thereof (the "Warranty Period"). If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, on the same terms as the original delivery was made, according to INCOTERMS 2020, a replacement part or repair the defect in place. Any repair or replacement part furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products under this Paragraph 3(a): (i) if the Products have not been stored, installed, operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(b) Services Warranty. Seller warrants to Buyer that the Services performed will be free from defects in workmanship and will conform to any mutually agreed upon specifications. If any failure to meet this warranty appears within 12 months from the date of completion of the Services, on the condition that Seller be promptly notified in writing thereof, Seller as its sole obligation for breach of this warranty will correct the failure by re-performing any defective portion of the Services furnished. Seller does not warrant the accuracy of, or performance results of, any conclusions or recommendations provided, nor that any desired objective will result from the Services provided and Seller shall not be liable for any loss of use or any production losses whatsoever.

(c) **THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(d) The remedies provided in Paragraphs 3(a) and 3(b) are Buyer's exclusive remedy for breach of warranty.

(e) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

### 4. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products or Software, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with the Products, Services, Software or this Agreement or from the performance or breach hereof.

(b) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products, Services, Software or this Agreement or from the performance or breach hereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the Agreement price.

(c) The limitations and exclusions of liability set forth in this Paragraph 4 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products, Services or this Agreement or from the performance or breach hereof shall terminate on the third anniversary of the date of this Agreement.

(e) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of goods by the Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

### 5. CHANGES, DELETIONS AND EXTRA WORK.

Seller will not be required to make changes in the Products or Services unless Buyer and Seller have executed a written change order for such change. Any such change order will include an appropriate adjustment to the Agreement price and/or schedule. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the change order will include appropriate modifications to this Agreement. Seller shall be entitled to a change order adjusting the Agreement price, schedule and/or any affected obligations of Seller if after the effective date of this Agreement (a) a change in applicable law, tariffs, levies, duties, taxes, regulations or ordinances or (b) any act or omission of Buyer or any other party for whom Buyer is responsible, or any error or change in Buyer-provided information should require a change in the Products or Services or cause an increase in the cost or change in the schedule to supply the Products or Services.

### 6. TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products, Software or Services shall be billed to and

by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

## 7. SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller a lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

## 8. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

## 9. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications or instructions and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing or modified by Buyer without the written consent of Seller, (i) Seller shall defend against claims made in a suit or proceeding brought against Buyer by an unaffiliated third party that any Product infringes a device claim of a patent issued as of the effective date of this Agreement in the country in which the Product will be operated, and limited to the field of the specific Products provided under this Agreement; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such claims; (ii) Seller shall satisfy any judgment (after all appeals) for damages entered against Buyer on such claims so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using any Product or a part thereof, then Seller will, at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the Agreement price that Seller has received for such Product or part. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

## 10. SOFTWARE LICENSE, WARRANTY, FEES

If Buyer and Seller have not entered into a separate license agreement, the following Software Terms and Conditions apply to any embedded software produced by Seller and furnished by Seller hereunder:

(a) The Software, as described in the Agreement ("Software"), and all written materials or graphic files that are fixed in any tangible medium and that relate to and support the Software ("Documentation"), and all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, mask work rights, moral rights, contract rights, and other proprietary rights recognized by the laws of any country inherent therein, including all changes and improvements requested or suggested by Buyer in the support and maintenance of the Software are the exclusive property of Seller ("Seller's Intellectual Property Rights"). All rights in and to the Software not expressly granted to Buyer in the Agreement are reserved by Seller. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Seller's existing or future patents. Software will not include any upgrades, new versions, releases, enhancements, or updates to the Software, unless agreed to by Seller in writing and at its sole discretion. To the extent any upgrades, new versions, releases, enhancements, or updates to the Software are provided by Seller, the term "Software" shall be deemed to include such upgrades, new versions or releases, enhancements or updates. To the extent any ownership right arises in Buyer with respect to the above, Buyer hereby assigns all of its right, title, and interest in and to any intellectual property embodied in in the Seller's Intellectual Property Rights, including enforcement rights, to Seller without the payment of any additional consideration thereof either to Buyer, or its employees, agents, or customers and agrees to execute any documents Seller deems necessary to effect such assignment.

(b) Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sub-licensable, revocable license to install, run, and use the Software, and any modifications made by Seller thereto only in connection with configuration of the Products and operating system for which the Software is ordered hereunder, and for the end-use purpose stated in the Documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, except Buyer may create a single copy for backup or archival purposes in accordance with the Documentation (the "Copy"). Buyer's license to use the Software and the Copy of such Software shall terminate upon any breach of this Agreement by Buyer. All copies of the Software, including the Copy, are the property of Seller, and all copies for which the license is terminated shall be returned to Seller, or deleted from Buyer's computer systems, with written confirmation after termination.

(c) Seller warrants that, on the date of shipment of the Software or the Products containing the Software to Buyer: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation. In no event does Seller warrant that the Software is error free or that Buyer will be able to operate the Software without impairments or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks,

Seller does not warrant that the Software or any equipment, system, or network using the Software is used will be free of vulnerability to intrusion or attack.

(d) If within 12 months from the date of delivery of the Products containing the Software, Buyer discovers that the Software is not as warranted above and notifies Seller in writing prior to the end of such 12 month period, and if Seller determines that it cannot or will not correct the nonconformity, Buyer's and Buyer's Seller-authorized transferee's exclusive remedies, at Seller's option, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of a pro rata share of the Agreement price or license fee paid.

(e) If any infringement claims are made against Buyer arising out of Buyer's use of the Software in a manner specified by Seller, Seller shall: (i) defend against any claim in a suit or proceeding brought by an unaffiliated third party against Buyer that the Software violates a registered copyright or a confidentiality agreement to which Seller was a party, provided that Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense and settlement of such claims (including the sole authority to select counsel and remove the Software or stop accused infringing usage); (ii) Seller shall satisfy a final judgment (after all appeals) for damages entered against Buyer for such claims, so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using the Software, Seller may at its option: (a) obtain for Buyer the right to continue using such Software; (b) eliminate the infringement by modifying the Software or replacing it with a functional equivalent (in which case, Buyer shall immediately stop use of the allegedly infringing Software), or (c) take back such Software and refund to Buyer all payments on the Agreement price that Seller has received. However, Seller's obligations under this Paragraph 10 shall not apply to the extent that the claim or adverse final judgment relates to: (1) Buyer's running of the Software after being notified to discontinue; (2) non-Seller software, products, data or processes; (3) Buyer's alteration of the Software; (4) Buyer's distribution of the Software to, or its use for the benefit of, any third party not approved in writing by Seller; or (5) Buyer's acquisition of confidential information (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a third party who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the confidential information. Buyer will reimburse Seller for any costs or damages that result from actions 1 to 5.

**THE FOREGOING PROVISIONS OF THIS SECTION 10(e) STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF ANY PROPRIETARY RIGHTS UNDER SECTION 10, INCLUDING BUT NOT LIMITED TO PATENTS AND COPYRIGHTS, BY THE SOFTWARE OR ANY PART THEREOF.**

(f) This warranty set forth in subparagraph (c) above shall only apply when: (1) the Software is not modified by anyone other than Seller or its agents authorized in writing; (2) there is no modification in the Products in which the Software is installed by anyone other than Seller or its agents authorized in writing; (3) the Products are in good operating order and installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer or a third party; (5) Buyer promptly notifies Seller in writing, within the period of time set forth in subparagraph (c) above, of the nonconformity; and (6) all fees for the Software due to Seller have been timely paid. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.**

(g) Buyer and its successors are limited to the remedies specified in this Paragraph 10.

(h) Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee.

## 11. SITE RISKS

(a) Site Conditions. The parties acknowledge and agree that as to conditions at the project site, Seller is relying upon information provided by Buyer. If Seller becomes aware of any subsurface, concealed, or differing condition, environmental hazard or violation of any environmental law or regulation, Seller will immediately suspend performance of the work in the affected area and notify Buyer. Buyer acknowledges that it will assume the risk of any increased costs and changes to the schedule that may result from such conditions. If Buyer does not immediately remediate such conditions, Seller may either suspend performance of all work or terminate this Agreement.

(b) Environmental Remediation. Buyer acknowledges that Seller is not an expert in environmental remediation and shall not be directed by change order or otherwise to perform any environmental remediation as part of the Services, including but not limited to asbestos and lead paint removal. If any environmental remediation becomes necessary, Buyer will contract directly with a qualified third party to perform such work.

## 12. TERMINATION

(a) Buyer may terminate this Agreement upon breach by Seller of a material obligation hereunder and Seller's failure to cure, or to commence a cure of, such breach within a reasonable period of time (but not less than 30 days) following written receipt of notice of the same from Buyer.

(b) Buyer may only terminate this Agreement for Buyer's convenience upon written notice to Seller and upon payment to Seller of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expenses (direct and indirect) incurred and commitments already made by Seller, overhead, and an appropriate profit. In case of such termination, the licenses granted in Paragraphs 10 and 13 hereof shall terminate.

(c) Seller shall have the right to suspend and/or terminate its obligations under this Agreement if payment is not received within 30 days of due date. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

### 13. INTELLECTUAL PROPERTY; CONFIDENTIALITY

(a) All intellectual property embodied in the Products, Services and Software provided to Buyer is the property of Seller, and any intellectual property developed, at least in part, by Seller under this Agreement is and remains the sole and exclusive property of Seller. Further, Seller shall have the right to collect and use data generated by the Products, Software or Services supplied hereunder.

(b) Buyer acknowledges that the information that Seller submits to Buyer in connection with this Agreement and the performance hereof is Seller's confidential and proprietary information. Buyer agrees not to disclose such information to third parties without Seller's prior written consent. Seller grants to Buyer a non-exclusive, royalty-free, non-transferrable license to use Seller's confidential and proprietary information for the purpose of the installation, operation, maintenance and repair of the Products that are the subject of this Agreement only; provided, however, that Buyer further agrees not to, and not to permit any third party to, analyze, measure the properties of, or otherwise reverse engineer the Products or any parts thereof, fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this Agreement. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorneys' fees). All copies of Seller's confidential and proprietary information shall remain Seller's property and may be reclaimed by Seller at any time in the event Buyer is in breach of its obligations under this Paragraph 13, or in case of Buyer's termination pursuant to Paragraph 12(b).

### 14. END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.

### 15. FORCE MAJEURE

(a) Force Majeure Defined. For the purpose of this Agreement "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, rejection of main forgings and castings, lack of available shipping by land, sea or air, lack of dock lighterage or loading or unloading facilities, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions.

(b) Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

(c) Strikes On-Site. Notwithstanding anything herein to the contrary, in the event a strike, lockout, blockage, slowdown, labor, union or other industrial disturbance at Buyer's site affects, delays, disrupts or prevents Seller's performance of this Agreement, Seller shall be entitled to a change order containing an appropriate adjustment in the Agreement price and delivery schedule.

### 16. INDEMNIFICATION AND INSURANCE

(a) Indemnification. Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or damage to tangible property ("Loss") arising in connection with the Products or the Services provided by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall

be entitled to be represented in the matter by counsel of its choosing at Buyer's expense. Where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

(b) Insurance. Seller shall maintain commercial general liability insurance with limits of \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Products or Services. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Services will be performed, and owned and non-owned auto liability insurance with limits of \$1,000,000 combined single limit. Seller will provide a Certificate of Insurance certifying the existence of such coverages upon request.

### 17. EXPORT CONTROL AND ECONOMIC SANCTIONS COMPLIANCE

(a) Buyer recognizes that any Products and Software that are the subject of this Agreement and originate in the U.S. remain subject to U.S. export control and economic sanctions laws and regulations even after such Products are exported from the U.S. (if applicable), and even though such Products and Software have been purchased in and, if applicable, exported from Canada. Buyer certifies that such Products and Software will not be diverted, transshipped, re-exported, or otherwise transferred in contravention of any applicable export control and economic sanctions laws and regulations, nor will it allow the Products or Software to be incorporated into other products or used to make direct products thereof that are exported, re-exported, used, or transferred in violation of U.S. export control and economic sanctions laws and regulations. Buyer further affirms that such Products and Software will not be used, directly or indirectly, in any application involving missile technology, nuclear proliferation, or chemical and biological weapons proliferation. Without limiting the foregoing, Buyer will not, nor will it allow third parties to, export, re-export, or transfer any Products or Software to any person or entity that is the target of U.S. sanctions or is in Crimea, Cuba, Iran, North Korea, or Syria, or any other country or territory in violation of U.S. sanctions.

(b) Buyer shall be responsible for any breach of this provision by it, and its successors and permitted assigns, as well as its parents, affiliates, employees, officers, directors, partners, members, shareholders, customers, agents, distributors, resellers, or vendors ("Buyer Parties") and shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost, damages, and penalties arising out of or relating to any non-compliance with U.S. export control and economic sanctions laws and regulations by any Buyer Party.

(c) Buyer shall, upon request of Seller, promptly provide all information necessary for Seller to ensure compliance with U.S. export control and economic sanctions laws and regulations, including but not limited to information related to end-users, end-uses, and destination countries.

### 18. SPECIAL CONDITIONS FOR PRESSURE VESSELS

For installation, repair, or maintenance Services on existing pressure vessels, piping and equipment, the following shall apply:

(a) Unless otherwise agreed and stated in the Agreement, Buyer shall be responsible for: (i) physically disconnecting and isolating vessels and equipment being repaired from existing piping and electrical power before Seller or any of its subcontractors start the Services, and take adequate precautions that re-connection and resumption of use does not take place until the Services are completed, and (ii) emptying the vessels and piping and freeing them from any toxic or harmful substances before the Services begin so that the vessels and piping are safe for Services to begin. Buyer shall maintain the area entirely free of combustible, toxic and asphyxiant substances and provide fire protection service until the Services are completed;

(b) If the Services are on an existing vessel or existing piping, the Buyer is responsible for determining the prior condition of the portion of the vessel or piping not involved in the Services, and its ability to withstand the Services and any tests that may be necessary;

(c) Buyer shall also be responsible for evaluating the effects of prior use of the vessel or piping upon structural adequacy, and the suitability of the vessel or piping for the service intended when the Services are completed;

(d) Seller has no obligation to provide any inspections or tests, and Buyer takes full responsibility for all necessary inspections and tests, including but not limited to, selection of testing personnel, type, location, frequency, and severity of any inspections and tests and all test results at any stage of the Services;

(e) Upon request of Seller, Buyer shall provide Seller with the history of the vessel, a statement of the tests to be performed and a statement of the proposed use of the vessel after completion of the Services, and

(f) If repairs are required: (i) Buyer will provide an Authorized Inspector ("AI") who will determine the scope of the Services to be done; (ii) Seller will provide Buyer with a proposed Quality Control ("QC") package specifying the methods and procedures that Seller will follow in performing the Services specified by the Buyer; (iii) the proposed QC package is subject to approval by the Buyer, and such approval must be provided before Services commence; (iv) after approval of the QC package, the Services shall be done in accordance with the QC package. At the option of the AI, hold points may be established for inspection during the course of the Services; and (v) upon completion of the Services, the AI shall inspect the

Services and provide a signed acceptance that they have been completed in accordance with the QC package. Such acceptance by the AI shall establish completion of the Services.

#### 19. GENERAL

(a) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable federal, state and local laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.

(b) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.

(c) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products and/or Services and any prior course of dealings or usage of the trade not expressly incorporated herein.

(d) This Agreement may be modified, supplemented or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition hereof.

(e) All terms of this Agreement which by their nature should apply after the cancellation, completion or termination of this Agreement, including, but not limited to, Paragraphs 4, 13, 17 and 19, shall survive and remain fully enforceable after any cancellation, completion or termination hereof.

(f)(i) If Seller's office is located in the United States, this Agreement and the performance hereof will be governed by and construed according to the laws of the State of Georgia.

(ii) If Seller's office is located in Canada, this Agreement and the performance hereof will be governed by and construed according to the laws of the Province of New Brunswick...

(g) (i) In the circumstances of f(i) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled by arbitration, to the exclusion of courts of law, administered by the American Arbitration Association ("AAA") in accordance with its Construction Industry Arbitration Rules in force at the time this Agreement is signed and to which the parties declare they will adhere (the "AAA Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Atlanta, Georgia by a panel of three members, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the panel and will be appointed by mutual agreement of the two party appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the AAA in accordance with the AAA Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the AAA in accordance with the AAA Rules.

(ii) In the circumstances of f(ii) above, any controversy or claim arising out of or relating to this Agreement, or the breach hereof, or to the Products or the Services provided pursuant hereto, shall be definitively settled under the auspices of the Canadian Commercial Arbitration Centre ("CCAC"), by means of arbitration and to the exclusion of courts of law, in accordance with its General Commercial Arbitration Rules in force at the time the Agreement is signed and to which the parties declare they will adhere (the "CCAC Rules"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the party against whom enforcement is sought or having jurisdiction over any of such party's assets. The arbitration shall be conducted in Saint John, New Brunswick by a panel of three arbitrators, one of whom will be appointed by each of Buyer and Seller and the third of whom will be the chairman of the arbitral tribunal and will be appointed by mutual agreement of the two party-appointed arbitrators. All arbitrators must be persons who are not employees, agents, or former employees or agents of either party. In the event of failure of the two party-appointed arbitrators to agree within 45 days after submission of the dispute to arbitration upon the appointment of the third arbitrator, the third arbitrator will be appointed by the CCAC in accordance with the CCAC Rules. In the event that either of Buyer or Seller fails to appoint an arbitrator within 30 days after submission of the dispute to arbitration, such arbitrator, as well as the third arbitrator, will be appointed by the CCAC in accordance with the CCAC Rules.

(h) In the event this Agreement pertains to the sale of any goods outside the United States or Canada, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

(i) The parties hereto have required that this Agreement be drawn up in English. Les parties aux présentes ont exigé que la présente convention soit rédigée en anglais.



## CORPORATE OFFICE

1401 W. Cypress Creek Rd., Ste. 100  
 Fort Lauderdale, FL 33309  
 Phone 954.974.6610  
 Fax 954.974.6182



## Sole Source Letter

<b>To:</b>	Nick Williams, P.E., CFM	<b>Date:</b>	7-12-2024
<b>Company:</b>	City of Stephenville	<b>From:</b>	Marty Unger
<b>Tel:</b>	(254) 918-1223	<b>Tel:</b>	954-383-1757
<b>Email:</b>	nwilliams@stephenvilletx.gov	<b>Email:</b>	Munger@parkson.com
<b># Pages:</b>	1	<b>Cc:</b>	
<b>Subject:</b>	Product: Troughing Belt Conveyor		

This document is to confirm that Parkson Corporation is the sole source provider for parts for the subject product. Parkson Corporation is the original manufacturer/supplier of the subject product and is the only source for OEM replacement parts.

*Please note that this letter is valid as of the date of the letter. Reconfirmation should be obtained after a period of six (6) months from the date hereof.*

If I can be of further assistance or should you have any questions, please feel free to contact me.

Sincerely,

Parkson Corporation





# Aftermarket

**Quote Number 00037411**

**Date Issued: 2024-03-22**

**[SyncedQuote.Contact.Name]**

**Expiration Date: 2024-05-21**

**Stephenville, Tx-ABC**

**Phone: 954-373-1757**

**Email: munger@parkson.com**

Thank you for your inquiry for Parkson Aftermarket parts. Below is the quote for the items requested. You may accept this quotation as your order by completing the fields and submitting or download as a PDF for processing through your purchasing team. If this is your first order in a while, please provide the billing and shipping info below. Please consider this email plus the link below to our Terms & Conditions to be the complete quotation.

**Project Number 650109**

Please verify this project (serial) number is accurate for this order.

Item Number	Product	Quantity	Price	Total Price
Custom	Customized1 C5-20TE-24SB Trough Idler Painted	2	\$583.70	\$1,167.40
Custom	Customized2 C5-20TE-24SBG Trough Idler Galvanized	2	\$831.00	\$1,662.00
Custom	Customized3 C5-R-24SB Return Idler with clips and screws	3	\$258.70	\$776.10
Custom	Customized4 C5-R-24SB Return Idler with clips and screws, Roll has 1/8" Urethane coating	3	\$420.00	\$1,260.00
Custom	Customized5 14200G Drop Bracket Wide, Galvanized	6	\$118.30	\$709.80
Custom	Customized6 1391G Training/Guide Idler	4	\$465.20	\$1,860.80

Custom	Customized7 WashBox 24TT	1	\$30,822.00	\$30,822.00
Custom	Customized8 Still missing Scraper Model CW 24" Belt	1	\$7,496.00	\$7,496.00
Custom	Customized9 Head Pulley, 16" Dia. x 26" Wide	1	\$2,148.60	\$2,148.60
Custom	Customized10 Tail Pulley, 16" Dia. x 26" Wide	1	\$1,125.90	\$1,125.90
0900000-	x- Freight Estimated, Ground Transportation	1	\$935.00	\$935.00

**Please include a copy of your Tax-Exempt Certificate if the order is Not Taxable.**

**USD Total**

**\$49,963.60**

## Schedule and Shipping

The above items have a leadtime of **9-11 weeks**. Our freight terms are **Prepay and Add**. The FOB Point for this order is **Shipping Point**.

Please advise of your shipping preference:

International Orders are quoted as EX-WORKS, per Incoterms, 2020 with a pick up location in Vernon Hills, IL.

**Thank you for the opportunity to present our quotation.**

**We look forward to working with you.**

**Meet our team: [Parkson-MRI-Schreiber Parts Team](#)**

## Acceptance

Purchase Orders can be made directly from this quote by updating the quantity and accepting this offer. If your company issues formal Purchase Orders, those should be made out to Parkson Corporation and emailed to your sales team member below. [You can use the OTHER ACTIONS button in the upper right corner to print or download this quote.](#)

This Quotation governed by and subject to Parkson's Standard Conditions of Sales, which are incorporated by reference and accessible at: [Parkson Aftermarket Domestic Terms & Conditions.](#)

*Your issuance of a purchase order or other request to proceed shall be deemed your acceptance of our quoted terms. No terms, provisions, or conditions of any subsequent purchase order will have any effect on Parkson nor otherwise modify these accepted terms, even if such terms state otherwise. You may reject our quoted terms by providing us with a redline or other objections to our terms for mutual negotiation prior to any issuance of a purchase order.*

Select your Payment Preference:

\*Credit card orders will not be charged packaging and handling. We accept MasterCard, Visa, and American Express. A 2.5% processing fee will be added to all invoices over \$10,000 paid by credit card.

\*\*All Orders are subject to the approval of Parkson's credit department. If this is a first-time order, and you are requesting payment terms, please include a copy of your credit/trade references.

Packaging and Handling fee of \$25 is applicable on all orders under \$2,000 unless paying by credit card. Our remit to address is Parkson Corporation, PO BOX 737090 Dallas, Texas 75373-7090

All international orders (shipments outside of USA or Canada) require payment before shipment. Wire transfer or Credit Card payment is acceptable. International orders are subject to these [Parkson Aftermarket International Term & Conditions](#) in lieu of those mentioned above. Wire transfer instructions as follows. Once we notify you that your order is ready, please make payment within 5 working days per the below instruction. Items must be picked up by your carrier within 10 days, unless Parkson is arranging shipping. Orders left without communication from you beyond the timing outlined above, will be returned to our stock and considered cancelled.

\*\*\*ACH/Wire Transfer: PARKSON CORPORATION Master Account JPMorgan Chase New York, NY 10017  
Account: 885093598, RTN/ABA: 021000021, Wire Swift Code BIC: CHASUS33

Parkson has a \$50 min. order policy. There are no cancellations or returns on Electrical or Custom Parts. A 35% restocking fee applies to any other returns.



Quote Number **00037411**

~~ [You may fill out this portion as your Purchase Order or](#)

[You can use the OTHER ACTIONS button in the upper right corner to print or download this quote.](#) ~~

<p>Name: _____</p> <p>Title: _____</p> <p>Phone: _____</p> <p>Parkson will email a PDF of the invoice. Who shall this go to: _____</p> <p>PO# _____</p>	<p><input type="checkbox"/> Taxable or <input type="checkbox"/> Tax Exempt</p> <p><input type="checkbox"/> <b>First Time Order with us?</b>        *** Please Provide the following ***</p> <p>Bill To Address: _____</p> <p>_____</p> <p>-----</p> <p>Ship Items to: _____</p> <p>_____</p> <p>_____</p>
---	---

Sender: **Carlos Robaina**      Parkson - **Inside Sales Engineer**  
 Phone: (954) 935-6215 Email: [crobaina@parkson.com](mailto:crobaina@parkson.com) Fax: (954) 252-3775

Your Local Rep: **Global WET**

**How are we doing? Please use this link to provide us with your [Aftermarket Feedback](#).**

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# Public Works Committee Meeting

## STAFF REPORT



**SUBJECT:** WWTP Capital Projects - Budgeted Aeration Basin Drive Replacement  
**MEETING:** Public Works Committee Meeting - 16 JUL 2024  
**DEPARTMENT:** Public Works  
**STAFF CONTACT:** Nick Williams

### RECOMMENDATION:

Staff recommends support of the proposal from Evoqua Water Technologies for budgeted replacement of two aeration basin drive assemblies at the wastewater treatment plant.

### BACKGROUND:

Aeration drives are a critical component in the treatment of wastewater. Two aeration basin drives are currently damaged and require emergency replacement.

### PROPOSAL:

A proposal was received from the original equipment manufacturer, Evoqua Water Technologies to replace the two drives. A representative from Evoqua visited the wastewater treatment plant on July 12, 2024 to assist in. Due to the long lead times, Jacobs, the city's contract operator, has requested the emergency replacement of the drives.

### FISCAL IMPACT SUMMARY:

The quote for two drives is \$94,523.80 with an approximate lead time of 8-10 weeks.

The FY23-24 budget allocated \$1,520,000 for capital projects at the wastewater treatment plant (WWTP) and the associated drive replacements were specifically included.

The professional services agreement for these capital projects was awarded at the council meeting on November 7, 2023, for \$315,080. Additionally, with the understanding that some funds will be carried to FY24-25 due to design time and equipment lead time schedules, \$300,000 was recently authorized for transfer, at the July 2, 2024 council meeting, from this capital project fund to a stormwater fund to address flooding issues on Chamberlin Avenue.

The total proposed cost of work for the previously discussed sludge pressing operations is \$355,308.60 which, if approved, would leave a \$864,691.40 balance for FY23-24 funds for capital WWTP projects. If the proposal for two drives is approved, the remaining balance will be \$770,167.60

A copy of quote for the drive replacement is attached to this staff report.

### ALTERNATIVES:

The following alternatives are provided for consideration:

1. Do not recommend approval the proposals as presented;

### ADVANTAGES:

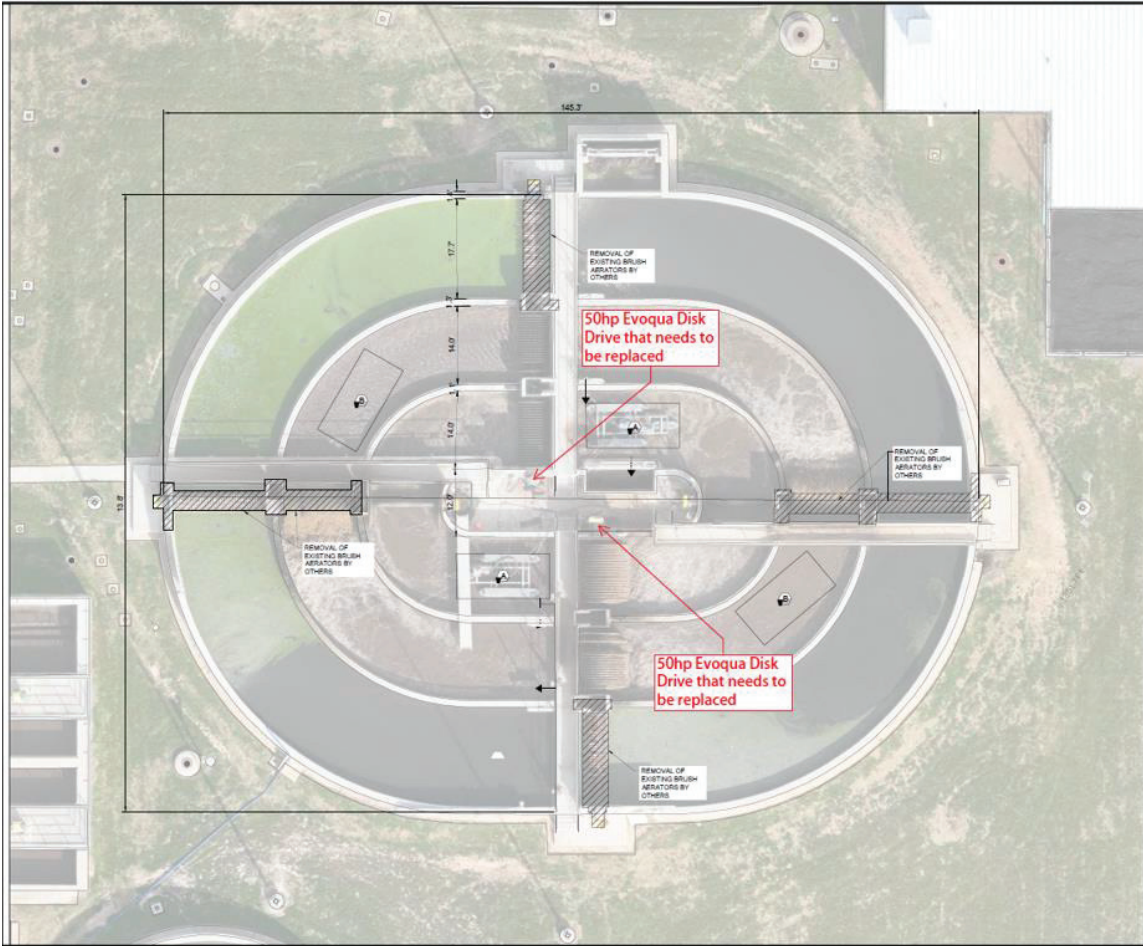
The work was anticipated and specifically allocated in the approved FY 23-24 budget.

### DISADVANTAGES:

No disadvantages are identified.

### ATTACHMENTS:

[Evoqua Water Technologies Quote](#)



**NOTES BY SYMBOL**

1. NEW DIGESTER AERATOR, SEE GENERAL NOTE 3.
2. EXISTING AERATION BASIN FLOATING AERATOR TO REMAIN, SEE GENERAL NOTE 1.
3. NEW AERATION BASIN AERATOR, SEE GENERAL NOTE 2.

**NOTES:**

1. THE TWO EXISTING FLOATING AERATORS SHALL REMAIN IN SERVICE AND BE CONSIDERED IN THE DESIGN OF THE NEW AERATORS. THEY WILL BE RELOCATED FROM LOCATION A TO LOCATION B.
2. THE NUMBER AND SIZE OF AERATION BASIN AERATORS SHALL BE DETERMINED BY THE AERATION MANUFACTURER.
3. ADEQUATE CABLE LENGTH SHALL BE PROVIDED TO LOCATE THE LOCAL CONTROL PANELS ON THE EXISTING WALKWAY.

**PROVENANCE**  
 PREPARED BY: [Name]  
 CHECKED BY: [Name]  
 DESIGNED BY: [Name]  
 DRAWN BY: [Name]  
 DATE: [Date]

**STEPHENVILLE TEXAS**  
 PROJECT TITLE: [Title]  
 CITY OF STEPHENVILLE, TEXAS  
 WWTWP EQUIPMENT REPLACEMENT

**C102**  
 SHEET 2 OF 28



CITY OF STEPHENVILLE  
900 CR454  
STEPHENVILLE, TX 76401

Thank you for this opportunity to offer this proposal for your Parts and/or Services. Evoqua maintains a complete inventory of parts for immediate delivery to anywhere in the USA. Evoqua services can be provided from any of our 118 service branches located within 100 miles of nearly all major cities and industrial complexes across the USA. Evoqua can also offer third party parts at competitive prices.

Sincerely,

Kyle Kamerer  
Phone: +1 (262) 521-8238  
Email: [kyle.kamerer@xylem.com](mailto:kyle.kamerer@xylem.com)

Proposal For: CITY OF STEPHENVILLE  
 900 CR454  
 STEPHENVILLE, TX 76401

Kyle Kamerer  
 Evoqua Water Technologies  
 N19W23993 Ridgeview Pkwy, Suite 200  
 Waukesha, WI 53188  
 Phone: +1 (262) 521-8238  
 kyle.kamerer@xylem.com

## Item Pricing Summary

### 2 - Items

Item	Part No Description	Qty	Net Price	Ext Price
1	<b>W3T16105</b>  DRIVE ASSM, 50HP,1775RPM,3PH,60HZ,326T,1272M	2 EA	\$45,511.90	\$91,023.80

Currency: USD

### Quote Totals

Item(s) Subtotal:	<b>\$ 91,023.80</b>
Freight:	\$ 3,500.00
Total Net Price:	<b>\$ 94,523.80</b>



## Evoqua Water Technologies Banking Details

### ACH - CTX

#### Evoqua's preferred payment method is via ACH - CTX:

JP Morgan Chase Bank

Attn: Evoqua Water Technologies, LLC

Account #: 603148011

Swift Code: CHASUS33

ACH Routing / ABA: 044000037

Wire Routing / ABA: 021000021

Remittance details should go to: [electronicfunds@evoqua.com](mailto:electronicfunds@evoqua.com)

### PAPER CHECKS VIA POSTAL SERVICE

#### Paper checks via Postal Service:

Send to our Lockbox, address is:

Evoqua Water Technologies LLC

28563 Network Place

Chicago, IL 60673-1285

### PAPER CHECKS VIA OVERNIGHT / COURIER Paper checks via Overnight / Courier:

JP Morgan Chase Bank

Attn: Evoqua Water Technologies Lockbox 28563

131 S Dearborn, 6th Floor

Chicago, IL 60603

Remittance details should go to: [electronicfunds@evoqua.com](mailto:electronicfunds@evoqua.com)

**\*\* If ever instructed to change banking information, contact us immediately at 1-800-466-7873 \*\***

## Payment Terms and Delivery

### PO Terms

Purchaser acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the goods and/or services provided under the Contract, including any export license requirements. Purchaser agrees that such goods and/or services shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. PURCHASER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

### Shipping Information

- Prepaid and Add: Shipping and Handling Charge

### Terms

- This quote is valid until 07-31-2024
- Payment terms are N30 - Net 30 days with proper credit, and are subject to the attached Evoqua Water Technologies Terms and Conditions

### Sales Tax & GST

- The pricing provided in this proposal does not include applicable Sales Tax or GST.
- If your company is exempt from Sales Tax or GST, or eligible for a reduced rate of tax, a tax exemption certificate must be provided no later than with your purchase order.
- If a timely, valid exemption certificate or other documentation is not provided, any applicable Sales Tax or GST will be invoiced and payable.
- New customers may be required to supply a signed credit application to be approved for credit terms.
- **NOTE:** You may be assessed a 3% fee if paying via Credit Card. Find more info on our website here > <https://www.evoqua.com/en/about-us/terms-conditions-sale-products-services/credit-card-fee-faqs/>. Ask us how to avoid paying fees by migrating to ACH CTX payment type.

### Purchase Order

- Customer must provide a VALID hard copy Purchase Order reflecting N30 - Net 30 days terms for all services/equipment. If a VALID hard copy Purchase Order cannot be provided, a credit card payment must be received in advance of the order.
- VALID hard copy Purchase Order should be sent to [kyle.kamerer@xylem.com](mailto:kyle.kamerer@xylem.com)
- If paying by credit card in lieu of Purchase Order, contact your Sales Representative.

You may also mail to:

Evoqua Water Technologies  
N19W23993 Ridgeview Pkwy, Suite 200  
Waukesha, WI 53188

Payment SHOULD NOT be sent to this above address.

## STANDARD TERMS OF SALE

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.
2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within N30 - Net 30 days after receipt of invoice. Buyer shall pay interest on all late payments not received by the due date. The Buyer shall be charged the lesser rate of 1 ½% interest per month or the maximum interest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting amounts due but unpaid, including without limitation, collections fees and attorneys' fees. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.
3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are FOB Shipping Point, or for international orders, ExWorks Seller's factory (INCO™ Terms 2020). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.
4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software, and other information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any written material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.
5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance. If Buyer requests a proposal for a change in the Work from Seller and subsequently elects not to proceed with the change, a change order shall be issued to reimburse Seller for reasonable costs incurred for estimating services, design services, and services involved in the preparation of proposed changes.
6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment, including overhead and profit, for work performed prior to the date of termination. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes, (with respect to on-site work) unusual weather conditions, epidemic, pandemic, communicable disease outbreak, quarantines, national emergency, or state or local order.
7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer, and Seller disclaims any warranty regarding such suitability. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components thereof, through the

earlier of (i) eighteen (18) months from delivery of the Work, or (ii) twelve (12) months from Buyer's initial operation of the Work, or in the case of services performed as part of the Work, ninety (90) days from the performance of the services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (i) operating and maintaining the Work in accordance with Seller's instructions, (ii) not making any unauthorized repairs or alterations, and (iii) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, improper thermal or electrical capacity, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend, and hold Buyer harmless from any claim, cause of action, or liability incurred by Buyer as a result of third-party claims for personal injury, death, or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (i) promptly notifying Seller of any claim, and (ii) providing reasonable cooperation in the defense of any claim. Buyer shall indemnify, defend, and hold harmless Seller from any claim, cause of action, or liability incurred by Seller as a result of third-party claims for personal injury, death, or damage to tangible property, to the extent caused by Buyer's negligence. Buyer shall have the sole authority to direct the defense of and settle any such indemnified claim. Buyer's indemnification is conditioned on Seller (i) promptly notifying Buyer of any claim, and (ii) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business, and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. **Termination.** Either party may, in addition to any other available remedy, terminate this agreement for a material breach upon issuance of a written notice of the breach and expiration of a thirty (30) day cure period. In the event of (i) a voluntary or involuntary petition in bankruptcy, (ii) an assignment for the benefit of a creditor, or (iii) a receivership, liquidation, or dissolution, Seller may terminate the agreement immediately, in addition to seeking any other available remedy. If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** In the event of any claim, dispute, or controversy arising out of or relating in any way to this Agreement (collectively, a "Claim"), Seller and Buyer shall first negotiate in good faith in an effort to resolve the Claim. If, despite good faith efforts, the parties are unable to resolve a Claim through negotiations, the parties shall mediate the Claim in accordance with the commercial mediation procedures of the American Arbitration Association ("AAA"), with such mediation to take place in Pittsburgh, Pennsylvania. If the parties are unable to resolve the Claim through such mediation, then the Claim shall be resolved through final and binding arbitration pursuant to the commercial arbitration procedures of the AAA, with such arbitration to take place in Pittsburgh, Pennsylvania before one arbitrator, who shall have authority to rule on jurisdiction over the Claim. Seller and Buyer agree to the exclusive jurisdiction of the federal and state courts situated in Allegheny County, Pennsylvania for purposes of entering judgment upon the arbitrator's award. The substantially prevailing party, as determined by the arbitrator, shall be entitled to recover all costs, expenses, and charges, including, without limitation, reasonable attorneys' fees and expert witness fees, incurred in connection with the Claim. In case of an Agreement under which Seller ships the Work outside of the United States, or under which Seller's and Buyer's places of business are in different countries, any Claim which is not resolved by the good faith negotiations and mediation required by this Section shall then be determined by arbitration administered by the International Center for Dispute Resolution in accordance with its International Arbitration Rules, with such arbitration taking place in Pittsburgh, Pennsylvania, USA, before one arbitrator, with English as the language of the arbitration. This Agreement and any Claim shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to the choice of law principles thereof.

12. **Export Compliance.** All items, and technologies, software, and work products are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. Any diversion contrary to U.S. law is prohibited. Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal, and usage of the Work provided under this Agreement, including any export

license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned, or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **Anti-Kickback Statute - Discounts.** It is the intent of both Buyer and Seller to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Buyer's price may constitute a 'discount or other reduction in price' under the Anti-Kickback Statute. Seller shall provide Buyer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Buyer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of Products. Buyer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third party reimbursement programs, including Medicare and Medicaid. Buyer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

14. **Federal Program Participation.** Seller represents and warrants that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last five (5) years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last five (5) years in Federal Healthcare Programs. Seller will notify Buyer of any change in the status of the representations and warranties set forth above.

15. **Limitation of liability.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE AGREEMENT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

16. **Miscellaneous.** These terms, together with any related Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.

**Only in the event that the Work contemplated in this Order is related to the provision of medical devices, the following additional terms apply:**

17. **Medical Devices Act and Regulatory Disclaimer.** Buyer acknowledges that it is familiar with the U.S. Safe Medical Devices Act of 1990 (the "Devices Act") and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify Seller within ten (10) days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on Buyer and/or Seller (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration (the "FDA") within seventy-two (72) hours (or such shorter time as required by law), in which case, such notice will be delivered to the FDA and Seller within said period). Buyer will maintain adequate tracking for the Products to enable Seller to meet the FDA requirements applicable to the tracking of medical devices. Although Seller has the required registrations, approvals, and licenses (e.g., U.S. 510(k) pre-market notifications) for all or substantially all of its systems, the purchase of parts and system components from Seller does not provide 510(k) compliance or compliance under any other law, rule or regulation for Buyer's system.

**Only in the event that the Work contemplated in this Order is related to the provision of leased or rented equipment (“Leased Equipment”), the following additional terms apply:**

18. **Rental Equipment / Services.** Any Leased Equipment provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

**Accepted by:** \_\_\_\_\_

**Print:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# Finance Committee Meeting

## STAFF REPORT

**SUBJECT:** Abandonment of Public Infrastructure in Creekside Apartment Complex  
**MEETING:** Finance Committee Meeting - 16 JUL 2024  
**DEPARTMENT:** Public Works / Finance  
**STAFF CONTACT:** Nick Williams / Monica Harris

### RECOMMENDATION:

Staff recommends the installation of a single master water meter and the abandonment of public water lines, hydrants, and meters installed for the Creekside Apartment Complex located at 1000 Lingleville Highway.

### BACKGROUND:

The apartments at the Creekside complex were constructed in 2016 and contain approximately 442 individually metered units as well as nine fire hydrants and approximately 4,500 feet of 2-inch, 6-inch, and 8-inch water lines.

A significant amount of the 3-person customer Service staff time is dedicated exclusively for service calls at this complex.

### FISCAL IMPACT SUMMARY:

Updated quotes have been requested for a master meter and vault and the associated installation.





# STAFF REPORT

**SUBJECT:** Discussion of B-2 Zoning Permitted and Conditional Uses

**DEPARTMENT:** Development Services

**STAFF CONTACT:** Steve Killen, Director

## RECOMMENDATION:

On June 18, 2024, the Committee held preliminary discussions regarding this topic and opted to conduct further research. The following options are being presented to the Committee for consideration and a recommendation will be provided to the full City Council. Should revisions to the land use regulations be desired, the Planning and Zoning Commission will be required to convene for a public hearing and forward a recommendation to the City Council for action.

## ALTERNATIVES

1. Consider categorizing all auto-related uses currently listed as “permitted uses” as “conditional uses.” With this approach, the Committee may review other, non-auto related “permitted uses” to soften uses with the B-2 district. Existing businesses would continue operation under the non-conforming use provision of the land-use regulations.
2. Make Auto Paint and Body Shop/repair a conditional use within the B-2 district.
3. Take no immediate action with the understanding that these items may ultimately be addressed under the new Comprehensive Plan (if so adopted) and subsequently revised land-use regulations.
4. Take no action.