

SECTION 00 52 00 PROCUREMENT AGREEMENT

This agreement is between the City of Sandy (“Buyer”) and _____ (“Seller”).

ARTICLE 1 – RECITALS

- 1.01 The Project for which the Goods and Special Services are to be provided under the Contract Documents is generally described as follows: City of Sandy Alder Creek Water Treatment Plant Upgrade Project that will include an on-site proof of performance pilot test and furnishing a complete set of two (2) hollow fiber membrane containers each with a firm capacity of 2.0 mgd.
- 1.02 The Seller manufactures membrane filtration systems used in water treatment plants.
- 1.03 Seller shall furnish the Goods and Services as specified or indicated in the Contract Documents.

ARTICLE 2 -- GOODS AND SPECIAL SERVICES

- 2.01 The Seller shall provide and operate a membrane filtration pilot system on the buyer’s Alder Creek water treatment plant site to validate the Seller’s membrane filtration media and system, design parameters, and operating guarantees. If the Buyer determines that the pilot test is successful, the Buyer will provide the Seller with written notice. The Buyer reserves the right to evaluate the Seller’s performance during the pilot study and use that as a basis for evaluating successful completion.
- 2.02 The Buyer will execute the Agreement, subject to Seller’s exceptions herein, and administer the Contract for Special Engineering Services associated with the preparation of Shop Drawings and other Submittals required for the project.
- 2.03 The Buyer is not obligated under this Agreement beyond Special Engineering Services and pilot testing until it issues a “Notice to Commence Fabrication” to the Seller. A Notice to Commence Fabrication may be issued at any time for a period of 365 days after the effective date of the Agreement.
- 2.04 Upon “Notice to Commence Fabrication” from the Buyer to the Seller, the Seller shall then:
 - A. Fabricate and deliver membrane filtration equipment and ancillary components (the “Goods”) to the Facility,
 - B. Assist during installation and commission the Goods,
 - C. Deliver operational and maintenance manuals,
 - D. Provide operations assistance for one year after installation of the Goods, and
 - E. Warranty the membrane modules and system per the Contract Documents.

- 2.05 The Buyer retains the right to assign the remaining portion of the work, which includes the production, delivery and commissioning of the goods and all associated Special Services, to a Contractor.
- 2.06 The Seller shall deliver the required Bonds and insurance certificates in accordance with Article 4 of the General Conditions.
 - A. At the time of the effective date of the Agreement, a Performance Bond shall be provided for the Special Engineering Services for the full amount stated in Proposal.
 - B. Another Performance Bond and the Payment Bond shall be provided upon issuance of the "Notice to Commence Fabrication" in the full amount of the stated amount in Proposal.
- 2.07 The Buyer retains the right to terminate this Agreement after the pilot test and contract with another entity to provide membrane filtration equipment for the Facility.

ARTICLE 3 – ENGINEER

3.01 The Contract Documents were prepared by Stantec Consulting Services Inc., 601 SW 2nd Ave, Suite 1400, Portland, OR 97204, Attn: Adam Odell, PE, Adam.Odell@stantec.com, 503.220.5409, hereinafter called "Engineer" and who is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents.

ARTICLE 4 – POINT OF DESTINATION

4.01 The Goods shall be delivered to the point of destination: The Alder Creek Water Treatment Plant, which contains no known address, but is accessible from a private gravel road in between Whiskey Creek Rd. and E. Terra Fern Drive 7 miles east of Sandy, OR.

ARTICLE 5 – CONTRACT TIMES

5.01 TIME IS OF THE ESSENCE

A. All time limits for Milestones for the delivery of Goods and the furnishing of services as stated in the Contract Documents are of the essence of the Contract.

5.02 DAYS TO ACHIEVE THE PROOF OF PERFORMANCE PILOT TEST

A. The dates for the pilot study are set forth in the following table:

Item No.	Pilot Study Contract Time	Notice to Begin Contract Times	Calendar Time (Days)
	Pilot Study		
A	Draft Work Plan	With Proposal	
B	Final Work Plan	Receipt of Engineer's Comments	7
C	Deliver pilot equipment	Effective Date of Agreement	14
D	Have Pilot Plant Operational at site	Effective Date of Agreement	28
D	Complete pilot study program	Effective Date of Agreement	118
E	Submit Draft Pilot Summary Report	Effective Date of Agreement	118

5.03 DAYS TO ACHIEVE SUBMITTAL OF SHOP DRAWINGS AND SAMPLES

- A. All Shop Drawings and Samples required by the Contract Documents will be submitted to the Buyer for Engineer's review and approval in accordance with the following schedule.

Special Engineering Services

Item	Notice to Begin Contract Times	Calendar Time (Days)
1. First Shop Drawing Submittal	Effective Date of Agreement	45
2. First Shop Drawing Approval	Effective Date of Agreement	90
3. Second Shop Drawing Submittal	Effective Date of Agreement	75 90 [Addendum #5]
4. Second Shop Drawing Approval	Effective Date of Agreement	120 135 [Addendum #5]

5.04 DAYS TO ACHIEVE DELIVERY OF GOODS

- A. The Goods are to be complete and ready for the Buyer's receipt of delivery at the Facility in accordance with the following schedule:

Goods

Item	Notice to Begin Contract Times	Calendar Time (Days)
1. Goods, excluding Computer Equipment, Membrane Modules, and Spare Parts	Notice to Commence Fabrication	240
2. Computer Equipment	Notice of Completed Installation	10
3. Membrane Modules	Notice of Completed Installation	14
4. Spare Parts	Notice of Completed Installation	30

1. The Seller shall not start to manufacture any Goods until the Shop Drawings have been approved and the Buyer has issued a "Notice to Commence Fabrication." The Goods, excluding the membrane modules, are to be fabricated and ready for delivery prior to 315 ~~240~~ 340 [Addendum #5] days after the "Notice to Commence Fabrication" is issued.
2. The Seller shall hold the spare parts, membrane modules and computer equipment and deliver to the Facility for installation during commissioning. The spare parts, computer equipment and membrane modules will be delivered in a timely manner as not to impede or delay the commissioning.
3. Long lead items may be purchased prior to "Notice to Commence Fabrication" if approval from Buyer is obtained. [Addendum #5].

5.05 PROJECT MILESTONES FOR SPECIAL SERVICES AND SELLER'S WARRANTY AND GUARANTEE

- A. The furnishing of Special Services to the Buyer will commence upon the execution of the Agreement between the Buyer and the Seller. The Seller shall deliver all Special Services required by the Contract Documents based upon the following milestones.

1. Special Engineering Services

- a. Upon execution of the Agreement, the Seller will begin to provide Special Engineering Services required for Shop Drawings and Samples.

2. Special Services

- a. Upon the issue of a Notice to Commence Fabrication, the following Contract Times will commence.

Special Services

Contract Time	Notice to Begin Contract Times	Calendar Time (Days)
1. Installation Manuals	Notice to Commence Fabrication	150
2. Commissioning	Notice of Completed Installation	30
3. Operator Training	Notice of Completed Commissioning	15
4. Preliminary O&M Manual	Notice of Completed Installation	15
5. Acceptance Testing	Notice of Completed Operator Training	45
6. Final O&M Manual	Notice of Substantial Completion	45
7. Warranty Period	Notice of Substantial Completion	365

- b. Operational and Maintenance Manuals shall be delivered at the times indicated in Section 01 73 00, Installation, Operations and Maintenance Manuals.
 - c. In accordance with Section 01 62 00, Installation of Membrane Equipment, Special Services associated with the Installation of the Goods, shall commence with the delivery of the Goods and shall be completed when the “Notice of Completed Installation” is issued by the Engineer.
 - d. In accordance with Section 01 66 00, Commissioning of Membrane Equipment, commissioning shall commence after the “Notice of Completed Installation” is issued and associated work has been completed. Upon completion of commissioning, a “Notice of Completed Commissioning” will be issued by the Engineer.
 - e. In accordance with Section 01 73 10, Training of Operations and Maintenance Personnel, Operator Training shall commence after the “Notice of Completed Commissioning.” Upon completion of Operator Training, a “Notice of Training Completion” will be issued by the Engineer.
 - f. In accordance with Section 01 67 00, Acceptance Testing of Membrane Equipment, acceptance testing shall not commence until after the prerequisite “Notice of Training Completion” is issued. Upon completion of Acceptance Testing, the “Notice of Substantial Completion” will be issued by the Engineer.
 - g. In accordance with Section 01 68 00, Operations Assistance, operations assistance shall be provided in accordance with the requirements of that Section. The Correction Period shall commence on the date when the “Notice of Substantial Completion” is issued.
- B. For the purposes of Seller’s warranty and guarantee, the following Project milestones are as follows:
- 1. In accordance with Section 01 74 00, Membrane System and Module Warranty, the Membrane Module Warranty Period shall commence on the date when the Acceptance Testing first begins.

2. The Correction Period shall commence on the date the “Notice of Substantial Completion” is issued.

5.06 LIQUIDATED DAMAGES

- A. The Buyer and the Seller recognize that time is of the essence of this Agreement and that the Buyer will suffer damages if the Special Engineering Services are not delivered to the Buyer within the times specified in Paragraph 5.02, above. They also recognize that the timely performance of services by other parties involved in the Buyer’s Project are materially dependent upon the Seller’s specific compliance with the requirements of Paragraph 5.02 plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. Further, they recognize the delays, expense, and difficulties involved in proving the actual losses or damages suffered by the Buyer if complete acceptable submittals are not delivered on time. Accordingly, and instead of requiring proof of such losses or damages, the Buyer and the Seller agree that as liquidated damages for delay (but not as a penalty), the Seller shall pay the Buyer \$2,500.00 for each day that expires after the times or dates specified in Paragraph 5.02 for deliveries of acceptable submittals. By execution of this Agreement, the Buyer and the Seller expressly agree that these liquidated damage amounts are reasonable under the circumstances existing at the time this Agreement is executed.

- B. The Buyer and the Seller recognize that time is of the essence of this Agreement and that the Buyer will suffer damages if 1) the Goods, associated with the Membrane Filtration System are not fabricated and ready for delivery to the Buyer within the time specified in Paragraph 5.03 above, or 2) if the membrane modules are not delivered in a timely manner as stated in Paragraph 5.03 above. They also recognize that the timely performance by other parties involved in the Buyer’s Project are materially dependent upon the Seller’s specific compliance with the requirements of Paragraph 5.03 plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. Further, they recognize the delays, expense, and difficulties involved in proving the actual losses or damages suffered by the Buyer if complete acceptable Goods or membrane modules are not delivered on time. Accordingly, and instead of requiring proof of such losses or damages, the Buyer and the Seller agree that as liquidated damages for delay (but not as a penalty) the Seller shall pay Buyer \$2,500.00 for each day that expires after the times or dates specified in Paragraph 5.03 for delays involving delivery of the Goods. By execution of this Agreement, the Buyer and the Seller expressly agree that these liquidated damage amounts are reasonable under the circumstances existing at the time this Agreement is executed.

- C. The Buyer and the Seller recognize that time is of the essence of this Agreement and that the Buyer will suffer damages if the Special Services are not delivered in a timely manner as stated in Paragraph 5.04, above. They also recognize that the timely performance by other parties involved in the Buyer's Project are materially dependent upon the Seller's specific compliance with the requirements of Paragraph 5.04 plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. Further, they recognize the delays, expense, and difficulties involved in proving the actual losses or damages suffered by the Buyer if complete acceptable Goods, membrane modules or Special Services are not delivered on time. Accordingly, the Buyer and the Seller agree that as liquidated damages for delay (but not as a penalty) the Seller shall pay Buyer \$1,000.00 for each day that expires after the times or dates specified in Paragraph 5.04 for delays involving delivery of the Special Services. By execution of this Agreement, the Buyer and the Seller expressly agree that these liquidated damage amounts are reasonable under the circumstances existing at the time this Agreement is executed.
- D. The Buyer may deduct the amount of liquidated damages from monies due the Seller under this Agreement. Liquidated damages shall not exceed five (5) percent of the contract price.
- E. The liquidated damages provided in this Section shall be Buyer's sole and exclusive remedy for Seller's late delivery of Special Engineering Services, Goods, and Special Services.
- F. If Seller is prevented from achieving the delivery times, milestone submittal dates or response times as defined in Articles 5.02A.5, 5.03D, and 5.03E, for any reason beyond Seller's reasonable control and not attributable to its actions or inactions, Seller shall not be assessed liquidated damages and shall be entitled to an adjustment of the Contract Times in an amount equal to the duration of the reason or event causing the delay in delivery.
- G. Upon receipt of Buyer's Notice to Commence Fabrication of Equipment that satisfies Seller's requirements for meeting the delivery schedule, Seller shall commence fabrication of equipment. The place of delivery specified therein shall be firm and fixed, provided that Buyer may notify Seller no later than 45 days prior to the scheduled shipment date of the products of an alternate point of delivery (the "Alternate Delivery Site"). Provided the parties agree to a variation to take into account any additional cost [or delay] incurred by Seller in implementing this change, the Alternate Delivery Site shall become the agreed place of delivery for all purposes under this Agreement. In such event the following conditions shall apply: (i) title and risk of loss shall pass to the Buyer upon delivery of the products to the Alternate Delivery Site; (ii) any amounts payable to the Seller upon delivery or shipment shall become payable upon delivery of the products to the Alternate Delivery Site; (iii) any additional expenses incurred by the Seller in connection with such shipment to storage shall become payable by the Buyer upon submission of the Seller's invoice(s) (including but not limited to costs of any additional transportation, preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any applicable taxes); (iv) transportation of the products from the storage facility to their place of installation shall be the Buyer's responsibility; and, (v) if the Contract includes Services, subject to the terms and conditions in the Contract the Seller shall resume provision of Services to Buyer when instructed to do so by Buyer provided that all amounts due hereunder plus any cost incurred by Seller in delaying such Services have been paid.

5.07 LIQUIDATED DAMAGES FOR PILOT STUDY

- A. During the Pilot Study, should the results indicate system performance capabilities that are less than those defined in Sections 11 30 00, Hollow Fiber Membrane Equipment, the Seller shall modify its equipment to meet the minimum defined system performance capabilities, repeat the entire duration of the Pilot Study, and pay for liquidated damages to account for the loss suffered by the Buyer due to schedule delay. Liquidated damages shall be assessed at \$500 per day starting at the determination of Pilot Study initial attempt failure until the commencement of the Pilot Study second attempt up to a maximum amount of \$5,000. Should the second attempt of Pilot Study yield system performance results that are less than those defined herein, the Seller will be deemed non-responsive and the Buyer may begin to negotiate with the next lowest responsive Proposer.
- B. The liquidated damages provided in this Section shall be Buyer's sole and exclusive remedy for Seller's failure to meet the Pilot Study requirements of this Agreement.
- C. Liquidated damages shall be assessed per day of delay and in the event that there are multiple items where the Contract Times has been exceeded Liquidated Damages shall not be combined.

ARTICLE 6 – CONTRACT PRICE

- 6.01 The Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds as follows:
 - A. The prices stated in Seller's Proposal, attached hereto as an exhibit.
 - B. Seller shall pay all applicable taxes and duties.
 - C. The Contract Price for membrane units and ancillary equipment shall remain valid for 180 days after the effective date of the agreement. If the "Notice to Commence Fabrication" is issued after 180 days from the effective date of the agreement (up to a maximum of 3 years), the Contract Price will be adjusted through Change Order. Contract Price adjustment will be the ratio of the Producers Price Index (PPI) of the PPI of month that the "Notice to Commence Fabrication" is issued, to the PPI of 180 days after the effective date of the agreement.
 - D. Membrane modules shall be made available for purchase by the Buyer at the pricing offered in the Proposal Pricing Form and that the pricing for future membrane modules, as part of a warranty claim or replacement purchase, shall be in accordance with the methods described in 01 74 00, Membrane System and Module Warranty. Membrane Module Pricing shall remain effective for a period of 20 years after the proposal date.
 - E. In the event that the City (or Contractor if the Contract is assigned) does not issue the "Notice of Completed Installation" within 500 days after the "Notice to Commence Fabrication", 40 percent of the Contract Price shall be adjusted through Change Order by the ratio of the PPI of the month the "Notice of Completed Installation" to the month of 500 days after the "Notice to Commence Fabrication".

1. This Change Order mechanism is provided in the event that there is an unforeseen delay during construction. The above provision is provided as the sole compensation to the Seller for the delay in the delivery of membrane modules and applicable Special Services described in Paragraph 5.03.A of the Agreement.
 2. The applicable provisions of Paragraph 5.03.A remain contractual obligations of the Seller.
- F. By issuance of a Change Order, all Alternate Proposal pricing in the Proposal Form shall remain open and subject to acceptance by the Buyer for a period of 2 years after the proposal date.

ARTICLE 7 – PAYMENT PROCEDURES

7.01 SUBMITTAL AND PROCESSING OF PAYMENTS

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

7.02 PROGRESS PAYMENTS

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

1. Progress Payments for Special Engineering Services:

- a. The Buyer shall pay Seventy-Five Thousand Dollars (\$75,000.00) for Pilot Testing Services provided as part Paragraph 10.01.A.1.a.1 of the General Conditions, to the Seller upon the Buyer's approval of the first Application for Payment for Pilot Testing Services, submitted in accordance with Paragraph 10.01.A.1 of the General Conditions, and accompanied by the Engineer's recommendation for payment in accordance with Paragraph 10.2.A of the General Conditions less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
- b. The Buyer shall pay One Hundred and Twenty Five Thousand Dollars (\$125,000.00) for Special Engineering Services provided as part, Paragraph 10.01.A.1.a.2 of the General Conditions to the Seller upon the Buyer's approval of the Application for Payment for Special Engineering Services, submitted in accordance with Paragraph 10.01.A.1 of the General Conditions, and accompanied by the Engineer's recommendation for payment in accordance with Paragraph 10.02.A of the General Conditions less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

2. Progress Payments for Goods and Special Services.

- a. The Buyer shall make progress payments on the Total Contract Price for Goods and Special Services in accordance with Article 10 of the General Conditions and based upon the following schedule:

Payment Schedule

Payment	Contract Milestone(s)	Percentage of Total Contract Price
First Application	Notice to Commence Fabrication	75
Second Application	Delivery of Goods	90
Final Application	Notice of Substantial Completion	100

- b. The Buyer shall pay the above percentages of the Total Contract Price provided as part Paragraph 13.01 of the General Conditions to the Seller upon the Buyer's approval of the Application for Payment, submitted in accordance with Paragraph 13.01 of the General Conditions, and accompanied by the Engineer's recommendation for payment in accordance with Paragraph 13.02 of the General Conditions less such amounts as Engineer may determine in accordance with Paragraph 13.02 of the General Conditions.
- c. The Total Contract Price is the Total Contract Price as indicated in the Proposal Pricing Form as adjusted through change order less liquidated damages assessed as part of the Contract.

7.03 FINAL PAYMENT

- A. Upon the Buyer's approval of the final Application for Payment, accompanied by the Engineer's recommendation for payment in accordance with Article 13 of the General Conditions, the Buyer shall make the final payment to bring the total payment to 100 percent of the Contract Price as adjusted for changes to the Contract Price or less any prior payments to the Seller. This payment, at the Engineer's recommendation, may be less such amounts, as Engineer shall determine in accordance with the Agreement or any applicable provisions of the General Conditions.
- B. The Final Payment shall be accompanied by a "Notice of Contract Completion" executed by both parties.

ARTICLE 8 -- INTEREST

- 8.01 Subject to the provisions of Article 13 of the General Conditions, all monies not paid within 60 days after the receipt of the Seller's Application for payment shall accrue interest at the rate of the 6 percent per annum.

ARTICLE 9 - SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
 - A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Proposal Documents.
 - B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Facility location and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.

- C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.
- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.
- G. The Seller has provided test data from either full-scale operation(s) or pilot test data from facilities of similar water quality to the Project as information and design concepts for its proprietary membrane system. In providing the information and design concepts for this Project, the Seller has considered and incorporated the concept of "linear scalability" into its design. Linear scalability means that: 1) the Seller has considered and evaluated the design and operational requirements and results of pilot or demonstration testing, and 2) that the equipment provided by the Seller is warranted to produce water in proportion to the design and operational parameters established and demonstrated during pilot testing.
- H. The concept of linear scalability relates to the surface area of the membrane and to its corresponding ability to produce water as a dependent variable on an incremental and proportional basis. Dependent variables are the parameters of specific or instantaneous design (e.g., membrane flux, process flows, temperatures, times, maximum pressures, and chemical dosages or consumption) requirements for filtration, backwashing, cleaning, and integrity testing processes that are established on a module basis during piloting and/or incorporated into the unit and system design provided by the Seller to meet the design capacity requirements established in the Contract Documents.
- I. The concept of linear scalability excludes the independent variables that involve membrane removal performance and overall system performance established in the Contract Documents. Such independent variables include the water quality removal requirements, removal efficiency, and the minimum design requirements for Maintenance/Recovery Clean interval when the membrane system is operated within its intended process design range.
- J. Seller's relationship to the Buyer in performance of this Agreement is that of an Independent Contractor. The personnel performing services under this Agreement shall at all times be under the Seller's exclusive direction and control and not employees of the Buyer. Seller shall pay all wages, salaries and other amounts due to its employees in connection with this agreement and shall be responsible for all applicable state, federal, and local reports and obligations respecting them such as labor wages, social security, income tax withholding, unemployment compensation and similar matters.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 CONTENTS

- A. The Contract Documents consist of the following:
1. Standard General Conditions for Procurement Contracts [Addendum #3]
 2. Procurement Agreement
 3. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit A-1 to Agreement between Buyer and Seller dated _____, Assignment of Contract; Consent to Assignment; and Acceptance of Assignment.
 - b. Exhibit A-2 to Agreement between Buyer and Seller dated _____ Agreement to Assignment by Seller's Surety.
 - c. Seller's completed Proposal Form and Proposal Pricing Form.
 - d. Documentation submitted by Seller prior to Notice of Award
 4. Performance Bond
 5. Payment Bond
 6. Section 00 80 50 Supplementary Conditions to EJCD Procurement General Conditions, P-200 (2000 Edition)
 7. Conceptual Design Report – Alder Creek Water Treatment Plant Upgrade Project
 8. Addenda (Numbers _____ to _____, inclusive)
 9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Commence Fabrication
 - b. Notice of Completed Installation
 - c. Notice of Completed Commissioning
 - d. Notice of Training Completion
 - e. Notice of Substantial Completion
 - f. Final Acceptance
 - g. Written Amendment(s)
 - h. Change Order(s)
 - i. Field Order(s)

- j. Engineer's Written Interpretation(s).
- B. The documents listed in Paragraph 10.01 A. are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended or supplemented as provided in Paragraph 3.04 of the General Conditions.
- E. In resolving inconsistencies or ambiguities between two or more components of the Contract Documents, the highest precedence shall be given to the Agreement and the order of precedence shall decrease in the following manner:
 - 1. Standard General Conditions for Procurement Contracts [Addendum #3]
 - 2. Agreement
 - 3. Addenda
 - 4. Section 00 80 50 Supplementary Conditions to EJCD Procurement General Conditions, P-200 (2000 Edition)
 - 5. Specification Section 01 74 00, Membrane System and Module Warranty
 - 6. Exhibits to the Agreement
 - 7. Performance Bond
 - 8. Payment Bond.
 - 9. Certificates of Insurance
 - 10. Final Acceptance(s)
 - 11. Change Order(s)
 - 12. Engineer's Written Interpretation(s)
 - 13. Field Order(s)
 - 14. Notice(s) of Substantial Completion
 - 15. Notice(s) of Training Completion
 - 16. Notice(s) of Completed Commissioning
 - 17. Notice(s) of Completed Installation
 - 18. Notice(s) to Commence Fabrication
 - 19. Project Specifications shall be used to govern the quality of the Goods.
 - 20. Submittals provided by the Seller in fulfillment of the Contract.

- F. In the event of a conflict between a schedule or a schedule update and a specific requirement of these Contract Documents, the Contract Documents shall, at all times, have precedence. Submittal or acceptance of a schedule or schedule update shall not supersede the requirements of the Contract Documents.

ARTICLE 11 – MISCELLANEOUS

11.01 DEFINED TERMS

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

11.02 ASSIGNMENT

- A. Buyer has the right to assign the Contract for furnishing Goods and Special Services hereunder and Seller shall accept such assignment. Forms documenting the assignment of the Contract, and consent of Seller's surety to the assignment are attached as exhibits to this Agreement.
1. The Contract will be executed in the name of Buyer initially and may be assigned to a Construction Contractor designated by Buyer. The assignment will occur on the effective date of the agreement between Buyer and the Construction Contractor. As of the date of acceptance of assignment by the Construction Contractor, all references in the Contract Documents to Buyer shall mean the designated Construction Contractor whose responsibilities will include the installation and erection of the Goods.
 2. The assignment of the Contract shall relieve Buyer from all further obligations and liabilities under the Contract. After assignment, Seller shall become a subcontractor or Seller to the assignee and, except as noted herein, all rights, duties, and obligations of Buyer under the Contract shall become the rights, duties and obligations of the assignee.
 3. After assignment:
 - a. All performance warranties and guarantees required by the Contract Documents will continue to run for the benefit of Buyer and, in addition, for the benefit of the assignee.
 - 1) Seller shall submit Applications for Payment to the Contractor who shall forward the Application for Payment to the Engineer.
 - 2) Buyer will provide payment directly to the Seller.
 - b. Except as provided in this Paragraph 11.02.A.3.b., all rights, duties and obligations of Engineer to assignee and Seller under this Contract will cease.
 - 1) Engineer will review Seller's Applications for Payment and make recommendations to assignee for payments as provided in Paragraphs 10.02 and 10.06 of the General Conditions.

- 2) Upon the written request of either the assignee or Seller, Engineer will issue with reasonable promptness such clarifications or interpretations of the Contract Documents, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be final and binding on assignee and Seller unless:
 - a) an appeal from Engineer's clarification or interpretation is made within the time limits and in accordance with the dispute resolution procedures set forth in Article 13 of the General Conditions; or
 - b) if no such dispute resolution procedures have been set forth, a written notice of intention to appeal is delivered by assignee or Seller to the other within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision (unless otherwise agreed to in writing by assignee and Seller), to exercise such rights or remedies as the appealing party may have with respect to such clarification or interpretation in accordance with applicable Laws and Regulations.
 - 3) When rendering a clarification or interpretation under Paragraph 11.02.A.3.b.2), Engineer will not show partiality to assignee or Seller and will not be liable in connection with any clarification or interpretation rendered in good faith.
- c. Upon assignment, Seller shall provide Construction Contractor with revised insurance certificates listing both Construction Contractor and Buyer as additional insureds.
- B. No other assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 SUCCESSORS AND ASSIGNS

- A. Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

11.04 CHOICE OF LAW AND VENUE

- A. The laws of the State of Oregon shall govern the formation, interpretation, and performance of this Agreement. Venue for mediation and/or actions arising out of this Agreement shall be in Clackamas County, Oregon.

11.05 ENTIRE AGREEMENT

- A. This Agreement that includes the Contract Documents contains the entire agreement, between the parties and supersedes all prior negotiations, discussions, obligations, and rights of the parties regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modification, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

11.06 COUNTERPARTS

- A. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

11.07 AUTHORITY TO EXECUTE AGREEMENT

- A. Each person signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that he or she, or it has the authority to sign on behalf of his or her or its respective corporation, partnership, joint venture, entity and agrees to hold the other party or parties hereto harmless if he or she or it does not have such authority.

11.08 SELLERS TOTAL LIMITATION OF LIABILITY

- A. Notwithstanding any other provisions of the Contract Documents, the Seller's total liability for direct damages arising at any time under any of the Contract Documents or otherwise in connection with completing the Contract (whether arising under breach of contract, tort, strict liability, or any other theory of law) shall not exceed the amount of the Contract Price. In no event shall either party be liable for any indirect, penalty, incidental, special, or consequential damages. Seller's aggregate liability under the Contract (whether arising under breach of contract, tort, strict liability, or any other theory of law) shall not exceed the amount of the Contract Price.

BUYER: City of Sandy, Oregon _____

SELLER: _____

By: _____

By: _____

Title _____

Executed on ____/____, 20____ (month/day/year)

[Corporate Seal]

Attest By: _____

Attest: _____

Title

Address for giving notice:

Approved As to Form:

Agent for service of process:

(If Seller is a corporation or a partnership, attach evidence of authority to sign.)

ASSIGNMENT OF CONTRACT; CONSENT TO ASSIGNMENT; AND ACCEPTANCE OF ASSIGNMENT

This assignment will be effective on the Effective Date of the Agreement between the Buyer and the construction contractor "Contractor". The Contract between the City of Sandy, Oregon ("Buyer") and ("Seller" as "MSS") for furnishing Goods and Special Services under the Contract Documents entitled **Membrane Equipment Procurement – Alder Creek Water Treatment Plant Upgrade Project** is hereby assigned, transferred, and set over to _____, ("Contractor"). Contractor shall be totally responsible for the performance of Seller and for the duties, rights, and obligations of Buyer, not otherwise retained by Buyer, under the terms of the Contract between Buyer and Seller. Upon assignment of this Procurement Agreement, Seller agrees to perform its obligations and duties to Buyer under the supervision and control of and as a subcontractor or Seller to the Contractor.

ASSIGNMENT DIRECTED BY:

City of Sandy, Oregon

(Buyer)

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Buyer-Seller Agreement.)

By: _____

Title: _____

Executed on ____ / ____ / ____

ASSIGNMENT ACKNOWLEDGED AND ACCEPTED BY:

Seller

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

By: _____
(Signature)

(Title)

ASSIGNMENT ACCEPTED BY:

Contractor

(If Construction Contractor is a corporation attach evidence of authority to sign.)

By: _____

AGREEMENT TO ASSIGNMENT BY SELLER'S SURETY

Surety hereby acknowledges and agrees that the Contract for furnishing Goods and Special Services under the Contract Documents entitled **Membrane Equipment Procurement – Alder Creek Water Treatment Plant Upgrade Project** by and between the City of Sandy, Oregon ("Buyer") and _____ ("Seller as MSS") may be assigned, transferred, and set over to _____ ("Contractor"), in accordance with Paragraph 11.02 of Agreement between Buyer and Seller.

Surety further agrees that, upon assignment of the Contract, the Contractor shall have all the rights of the Buyer under the Performance Bond.

(Corporate Seal)

Surety
Company _____

By: _____

Signature and Title
(Attach Power of Attorney)

END OF SECTION