

AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

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AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT CONTRACT

This Procurement Agreement is by and between **City of Sandy** ("Buyer") and **Farnham Electric** ("Seller") for **ALDER CREEK WATER TREATMENT PLANT IMPROVEMENTS – ELECTRICAL PRE-PROCUREMENT** ("Procurement Contract").

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods and Special Services*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows: The City of Sandy requests Bids for the procurement of a switchboard, an automatic transfer switch, and standby generator for the Alder Creek Water Treatment Plant (ACWTP) Improvements Project.

1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: Upgrading and improving the infrastructure at ACWTP.

1.03 *Engineer*

- A. Buyer has retained **Keller Associates** ("Engineer"), to prepare Procurement Contract Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.

1.04 *Point of Destination*

- A. The Point of Destination is designated as: 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. Coordinate with City for details prior to delivery.

1.05 *Project Funding*

- A. This project was funded in part with a financial award from the Special Public Works fund, funded by the Oregon State Lottery and administered by the Oregon Infrastructure Finance Authority.

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings	30 days after Executed Agreement	
Shop drawing Resubmittal	60 days after Executed Agreement	
Deliver acceptable Goods to Point of Destination	480 days after Executed Agreement	Delivery may be made in the 15-day period before delivery date
Readiness for Final Inspection and Acceptance of Goods and Special Services		Following installation by Contractor according to their schedule (yet to be determined).

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer's Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within **15** days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.

2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer **\$125** for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable

Goods. Liquidated damages for failing to timely attain the delivery Milestones are not additive, and will not be imposed concurrently.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price—Based on Attached Bid*

- A. For furnishing the Goods and Special Services in accordance with the Procurement Contract Documents, Buyer shall pay Seller the prices stated in Seller's Bid, attached hereto as an exhibit.
- B. City may award more than one contract by awarding separate items or groups of items to various bidders.
- C. The items awarded under this agreement are items one switchboard, one generator, and one automatic transfer switch.

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

ID	Payment for Lump Sum Line <u>Item 1</u>	Percentage of Item Total
P1.1	Receipt of Approval of Shop Drawings and Samples	30
P1.2	Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	60
P1.3	Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	10

ID	Payment for Lump Sum Line <u>Item 2</u>	Percentage of Item Total
P2.1	Receipt of Approval of Shop Drawings and Samples	30
P2.2	Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	60
P2.3	Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of	10

	warranties and other final documentation required by the Procurement Contract Documents	
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ID	Payment for Lump Sum Line <u>Item 3</u>	Percentage of Item Total
P3.1	Receipt of Approval of Shop Drawings and Samples	30
P3.2	Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	60
P3.3	Final Payment: Correction of non-conformities, provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Contract Documents	10

- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 Interest

- A. All amounts not paid when due will bear interest as the rate of **10%** percent per annum.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT

5.01 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS

6.01 List of Procurement Contract Documents

- A. The Procurement Contract Documents consist of the following:
1. Procurement Agreement.
 2. General Conditions of the Procurement Contract.
 3. Supplementary Conditions of the Procurement Contract.

4. Procurement Specifications and Technical Specifications as listed in the Procurement Specifications table of contents.
 5. Procurement Drawings listed in the Procurement Specifications table of contents
 6. Addenda (Numbers **1** through **1**, inclusive).
 7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 8. Exhibits to this Procurement Agreement (enumerated as follows):
 - a. Exhibit A, Assignment of Contract, Consent to Assignment, and Acceptance of Assignment.
 - b. Exhibit B, Surety's Consent to Assignment.
 - c. Documentation submitted by Seller
 9. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and
 - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 7—SELLER'S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Seller's Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
1. Seller has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
 3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.

4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. Seller's entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

7.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.

ARTICLE 8—CONFIDENTIALITY

8.01 *Confidential Information*

- A. Confidential information is information in documents submitted by Seller that Seller clearly and prominently labels in writing to be a trade secret, proprietary, or confidential. Such documents, if any, will be maintained in a manner that endeavors to avoid disclosing confidential information to third parties, to the extent allowed by Laws and Regulations.
- B. Seller shall clearly and prominently mark confidential information with the word "CONFIDENTIAL" on each page or sheet or on the cover of bound documents. Place "CONFIDENTIAL" stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document.

8.02 *Disclosure of Confidential Information*

- A. If Buyer is requested to disclose confidential information, or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, public information requests, or other requests under Laws and Regulations) to disclose confidential information, or is required by a regulatory body, governing agency, or controlling authority to disclose confidential information, or make any other disclosure that is prohibited or otherwise constrained by the Procurement Contract, Buyer will provide Seller with prompt notice so Seller may seek an appropriate protective order or other remedy. Seller will be solely responsible for submitting to the regulatory body, governing agency, or controlling authority any arguments, briefs, memoranda, motions, authorities, or other information in opposition to disclosure.
- B. Buyer's obligations with respect to confidential information are nullified by the following exceptions:
 - 1. Confidential information becomes a part of the public domain through publication or otherwise, through no fault of the Buyer;
 - 2. Buyer can demonstrate through suitable documentation that the confidential information was already in the Buyer's possession, and not previously marked as confidential, or was otherwise publicly available prior to the Effective Date of the Procurement Contract;
 - 3. The confidential information is subsequently and independently disclosed to the Buyer by a third party who has a lawful right to disclose such information;
 - 4. Buyer has a good faith belief that disclosure is required or justified; or
 - 5. Buyer is required to disclose the confidential information by court order or by applicable Laws and Regulations.

8.03 *Waiver of Immunity*

- A. Notwithstanding any other provision of the Procurement Contract, it is stipulated and agreed that by accepting confidential information, Buyer has not and does not waive its legal immunity (if any) from suit or liability.

ARTICLE 9—MUTUAL WAIVER

9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the

tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

Farnham Electric Contract Documents

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Contract is **October 6, 2025** (month/day/year).

Buyer

Seller

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(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 this Agreement.)

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

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

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

EXHIBIT A—ASSIGNMENT OF PROCUREMENT CONTRACT, CONSENT TO ASSIGNMENT, AND ACCEPTANCE OF ASSIGNMENT

This assignment will be effective on the effective date of the construction contract between Buyer (as "Owner") and Contractor/Assignee (as "Contractor").

The Procurement Contract between **City of Sandy** (“Buyer”) and **Farnham Electric** (“Seller”) for furnishing Goods and Special Services entitled **ALDER CREEK WATER TREATMENT PLANT UPGRADES – ELECTRICAL PRE-PROCUREMENT** (Procurement Contract) is hereby assigned, transferred, and set over to Contractor/Assignee, as assignee, by Buyer, as assignor. Upon assignment the Contractor/Assignee shall have the duties, rights, and obligations of Buyer under the terms of the Procurement Contract, and will be responsible to Owner under the construction contract for the performance of obligations by Seller, which will become a Subcontractor or Supplier to Contractor/Assignee. Buyer, Seller, and Contractor/Assignee hereby acknowledge and agree to be bound by the terms and conditions of assignment set forth in Article 5 of the Agreement Between Buyer and Seller for Procurement Contract.

Assignment Made by Buyer

(typed or printed name of organization)

By: _____ Date: _____
(individual's signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

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.

Assignment Acknowledged and Accepted by Seller

(typed or printed name of organization)

By: _____ Date: _____
(individual's signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

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

Assignment Accepted by Contractor/Assignee

(typed or printed name of organization)

By: _____ Date: _____
(individual's signature) (date signed)

Name: _____ Title: _____
(typed or printed) (typed or printed)

If Contractor/Assignee is a corporation, attach evidence of authority to sign.

