

**CITY OF SANDY, OREGON  
PERSONAL SERVICES AGREEMENT**

THIS PERSONAL SERVICES AGREEMENT (“Agreement”), made and entered into this September 3, 2024, by and between the City of Sandy, an Oregon municipal corporation ("City") and Keller Associates (“Contractor”).

**RECITALS**

**WHEREAS**, the City’s fiscal year 2023 – 2025 budget provides for investments in the City’s Alder Creek Treatment Plant; and

**WHEREAS**, the City released a request for proposals (RFP) for engineering services for the Alder Creek Water Treatment Plant Upgrades on March 18, 2024; proposals were received from two proposers on May 2, 2024; and selection was made after reviewing the selection committee’s scores based on the criteria listed in the RFP, with a total of 100 points possible.

**WHEREAS**, contract was awarded to Contractor by Sandy’s City Council at their meeting on ~~September 16, 2024~~; and

October 7

**WHEREAS**, City desires to retain Contractor to perform certain professional consulting services, as further identified in this Agreement. Contractor is willing to perform these services for and in connection with Alder Creek Water Treatment Plant Upgrades (the “Project”), subject to and in accordance with the terms and conditions contained in this Agreement.

**WHEREAS**, This project will be 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. This project will also be funded with Safe Drinking Water financing and required clauses are included as part of Exhibit C.

**NOW THEREFORE**, in consideration of the promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**1. Term.**

**8**

This Agreement shall run from October ~~1~~, 2024 through and including May 31, 2027 unless sooner terminated under the provisions of this Agreement, and may be extended for additional like periods. All Services under this Agreement shall be completed prior to the expiration of this Agreement.

## **2. Contractor's Service.**

The scope of Contractor's services and time of performance under this Agreement are set forth in Exhibit A (the "Services"). All provisions and covenants contained in Exhibit A are incorporated by reference and are a part of this Agreement as if fully set forth. Any conflict between this Agreement and Exhibit A shall be resolved first in favor of this written Agreement. Contractor will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Agreement. The parties may only change the scope of services through an amendment. No information, news, or press releases related to the Project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior written authorization of the City's Project Manager. Exhibit C details requirements

## **3. Compensation.**

- A. Agreement Sum. As compensation for Contractor's timely performance of the Services in accordance with this Agreement, City shall pay Contractor a total sum not to exceed \$1,911,200 (the "Agreement Sum"), in accordance with the "Schedule of Rates" attached hereto as Exhibit B. Contractor will submit monthly invoices to City concerning the Services performed by Contractor during the immediately preceding month (each an "Invoice"). Each Invoice will contain the following information: (a) a summary of the Services performed by Contractor (and by whom); (b) the number of hours (or fraction thereof) each person spent to perform the Services; (c) the applicable fee(s) for performing the Services; and (d) all other information reasonably requested by City. City will pay the undisputed amount due under each Invoice within thirty (30) days after City has reviewed and approved the Invoice. No compensation will be paid by City for any portion of the Services not performed. Payment shall not be considered acceptance or approval of any Services or waiver of any defects therein. The Agreement Sum shall constitute full and complete payment for said Services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement or agreed to by mutual written and duly signed agreement of City and Contractor. Notwithstanding the foregoing, the parties may not increase the Agreement Sum without prior written authorization of the City Manager. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement Sum or Agreement time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.
- B. Contractor Identification. Contractor shall furnish to City Contractor's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Contractor's Social Security number.

## **4. Project Managers.**

City's Project Manager is Adam Odell, PE. Contractor's Project Manager is Jason King, PE.

Each party shall give the other written notification of any change in their respective Project Manager.

**5. Duty to Inform.**

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

**6. Contractor is Independent Contractor.**

Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Contractor hereby expressly acknowledges and agrees that as an independent contractor, Contractor is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Contractor shall not affect his/her independent ability (or the ability of his/her insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

**7. Work; Intellectual Property; Records.**

A. Work is Property of City. All documents, design documents, drawings, and specifications prepared by Contractor and furnished to the City as part of the Services, "deliverables," shall become the property of the City upon full payment for all Services, along with all underlying intellectual property rights, including but not limited to copyrights and patents of any type. Contractor shall retain its ownership rights in its design methods, drawing details, specifications, databases, computer software, processes, techniques, trade secrets, and other proprietary property used by Contractor to fully complete the Services (the "instruments of service"). The City agrees to obtain prior written agreement for any reuse or modifications of the instruments of service, and understands that any unauthorized use of the instruments of service shall be at the Owner's sole risk and without liability to the Consultant.

B. Records. Contractor shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three (3) years after City makes final payment on this Agreement and all other pending matters are closed. Contractor shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

**8. Errors.**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost but only to the extent caused by Contractor's negligent acts, errors or omissions in the course of performing this Agreement.

**9. Extra or Changes in Work.**

Only the City Manager or Project Manager may authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement Sum or project schedule due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**10. Indemnity.**

Contractor acknowledges responsibility for any and all liability arising out of the negligent performance of this Agreement and shall hold City, its officers, employees, elected and appointed officials, volunteers, and agents harmless from and indemnify the City, its officers, employees and agents for any and all liability, settlements, loss, costs and expenses to the extent caused by (i) Contractor's negligent acts, errors or omissions in the course of performing this Agreement, including but not limited Contractor's negligent provision of professional services under this Agreement; (ii) Contractor's failure to pay any tax arising out of or resulting from performance of the Services; and/or (iii) an infringement of patent, trademark, and/or copyright for which Contractor is responsible. Contractor's indemnification obligations provided in this Section will survive the termination of this Agreement. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**11. Insurance.**

A. Liability Insurance. Contractor shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Contractor, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Contractor's operations, in an amount not less than Two Million dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured. Limits may be met with excess or umbrella policies.

B. Professional Liability. Contractor shall maintain a policy of Professional Liability Insurance in an amount not less than One Million dollars (\$1,000,000) per claim and Two Million dollars (\$2,000,000) aggregate.

C. Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for State of Oregon Workers' Compensation coverage for all Contractor's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as

provided by ORS 656.407, or as a self-insured employer. Contractor shall provide to City within ten (10) days after Agreement award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Contractor is self-insured.

- D. Certificates. Prior to commencing the Services, Contractor shall furnish to City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled, except for non-payment.
- E. Primary Coverage. The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

## **12. Breach of Agreement.**

- A. Contractor shall remedy any breach of this Agreement within the shortest reasonable time after Contractor first has actual notice of the breach or City notifies Contractor of the breach, whichever is earlier. If Contractor fails to either remedy the breach or actively begin and maintain efforts satisfactory to the City to remedy the breach within ten (10) days of actual notice or the City's mailing, City may terminate that part of the Agreement affected thereby upon written notice to Contractor, may obtain substitute services in a reasonable manner, and recover from Contractor the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.
- B. If the breach is material and Contractor fails to either remedy the breach or actively begin and maintain efforts satisfactory to the City to remedy the breach within five (5) days of the City's notice City may then treat Contractor as being in default and pursue any remedy available for such default at law or in equity.
- C. Pending a decision to terminate all or part of this Agreement, City unilaterally may order Contractor to suspend all or part of the Services under this Agreement. If City suspends terminates all or part of the Agreement pursuant to this Section, Contractor shall be entitled to compensation only for Services rendered prior to the date of termination or suspension, but not for any Services rendered after City ordered termination or suspension of those Services. If City suspends certain Services under this Agreement and later orders Contractor to resume those Services, Contractor shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- D. To recover amounts due under this Section, City may withhold from any amounts owed by City to Contractor, including but not limited to, amounts owed under this or any other Agreement between Contractor and City.

**13. Mediation; Trial Without A Jury.**

If either party has a claim or dispute in connection with this Agreement, it shall first attempt to resolve the dispute through mediation. The parties shall mutually select an acceptable mediator, shall equally share the applicable mediation fees, and shall mutually select an applicable mediation venue. If either party fails to proceed in good faith with the mediation, or the parties otherwise fail to resolve the claim via the mediation process, the claiming party may proceed with litigation. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees, in both mediation and litigation.

**14. Termination for Convenience.**

The City may terminate all or part of this Agreement at any time for its own convenience by written notice to Contractor. Upon termination under this Section, Contractor shall be entitled to compensation for all Services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier.

**15. Payment of Claims by the City.**

If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Agreement as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor pursuant to this Agreement. The City's payment of a claim under this Section shall not relieve Contractor or Contractor's surety, if any, from responsibility for those claims.

**16. Public Contracting Requirements.**

- A. Overtime. Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC §201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.
- B. Payment for Labor or Material. Contractor shall make payment promptly, as due, to all persons supplying to Contract labor or material for the performance of the work provided for in this Agreement. (ORS 279B.220)
- C. Contributions to the Industrial Accident Fund. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)
- D. Liens and Claims. Contractor shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. (ORS 279B.220)

- E. Income Tax Withholding. Contractor shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279B.220)
- F. Hours of Labor. Contractor shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)
- G. Workers' Compensation. Contractor is a subject employer that will comply with ORS 656.017. Contractor warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Contractor shall indemnify City for any liability incurred by City as a result of Contractor's breach of the warranty under this Paragraph. (ORS 279B.230)
- H. Medical Care for Employees. Contractor shall promptly, as due, make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Contractor's employee(s), all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230)
- I. Non-Discrimination. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.
- J. Lawn or Landscaping. If the Services or Project under this Agreement contemplate lawn or landscape maintenance, Contractor shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective. (ORS 278B.225)
- K. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this Agreement.
- L. Federal Environmental Laws. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- M. Tax Law Compliance. Contractor (to the best of Contractor knowledge, after due inquiry),

for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:

- 1) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- 2) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- 3) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- 4) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

N. The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

**17. Law of Oregon.**

The Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Clackamas County, Oregon.

**18. Successors and Assignments.**

Both City and Contractor bind themselves and any partner, successor, executor, administrator, or assign to this Agreement. Neither City nor Contractor shall assign or transfer their interest or obligation hereunder in this Agreement without the written consent of the other party. Contractor must seek and obtain City's written consent before subcontracting any part of the work required of Contractor under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this Section shall be void.

**19. Modification.**

Any modification of the provisions of this Agreement shall be reduced to writing and signed by authorized agents of City and Contractor.

**20. No Waiver of Legal Rights.**

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

**21. Method and Place of Giving Notice, Submitting Bills and Making Payments.**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Notice, bills, payments, and other information shall also be made via email to the parties listed in the address block below. Payments may be made by personal delivery,



mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

**CITY OF SANDY**

**Jenny Coker**

Public Works Director

Email: [jcoker@ci.sandy.or.us](mailto:jcoker@ci.sandy.or.us)

CC: [portia.inman@stantec.com](mailto:portia.inman@stantec.com)

Phone: 503-668-6927

Fax: n/a

Address: 39250 Pioneer Boulevard  
Sandy, OR 97055

**KELLER ASSOCIATES, INC.**

**Larry Rupp**

President/CEO

Email: [lrupp@kellerassociates.com](mailto:lrupp@kellerassociates.com)

CC: [jking@kellerassociates.com](mailto:jking@kellerassociates.com)

Phone: 208-288-1992

Fax: 208-288-2999

Address: 100 East Bower Street, Suite  
110, Meridian, ID 83642

When notices are so mailed, they shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this Section.

**22. Conflict Between Terms.**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the Agreement, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**23. Severability.**


If any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the Agreement.

**24. Integration; Counterparts; Electronic Signatures.**

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

*[Signatures are on the following page.]*

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

<hr/> <p>City of Sandy Tyler Deems, City Manager</p>	 <p>Digitally signed by Larry S. Rupp Date: 2024.09.06 12:52:55-06'00'</p> <hr/> <p>Keller Associates, Inc. Larry Rupp, President/CEO</p>
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## Exhibit A

### City of Sandy

# Alder Creek Water Treatment Plant Upgrades SCOPE OF WORK

## PROJECT DESCRIPTION

**City of Sandy** (“Owner”) has contracted with **Keller Associates** (“Consultant”) to provide engineering, bidding, and construction services for upgrades to the Alder Creek Water Treatment Plant (WTP) and related facilities. The Owner has retained Stantec as the Owner’s Representative and Stantec will be supporting the Owner throughout the project.

As indicated in the Alder Creek Water Treatment Plant Conceptual Design Report, prepared by Stantec, the project is anticipated to replace the existing Trident filter units with two, Owner pre-purchased, Low Pressure Membrane Filtration (LPMF) units to achieve a firm treatment capacity of 3 MGD. Upgrades to the raw water pump station, membrane feed tank, chemical feed systems, finished water pump station, and new generator and automatic transfer switch are anticipated to support the new LPMF treatment units. The new WTP equipment will be installed outside on a concrete slab with a covered awning, a new enclosed building is not required.

The treated water from the WTP is conveyed to the Terra Fern Reservoir and Pump Station. Due to the increased capacity at the WTP, an evaluation of the existing pump station and distribution system is to be completed to understand the existing capacity and associated constraints. The first phase of the project will include a condition assessment, capacity analysis, and localized waterline modeling to identify the recommended distribution and pump station improvements. A management reserve budget (Task 7) has been included to support the design, bidding, and construction of the identified improvements at the Terra Fern site. Consultant will notify Owner if additional budget is required to complete the improvements.

Consultant’s services are limited to those services outlined in the following scope of work.

## SCOPE OF WORK

### **TASK 1: PROJECT MANAGEMENT**

#### *Consultant Responsibilities:*

- 1.1. General Project Management. Provide general project administration services including contract administration, project accounting, invoicing, scheduling, bi-weekly project coordination meetings, monthly progress reports, and internal project administration.

Funding is provided via two sources: Special Public Works Fund and Safe Drinking Water Revolving Loan Fund. This project will invoice both funds. Work associated with the Alder Creek Water Treatment Plant treatment process will be invoiced to the Special Public Works Fund and work associated with Terra Fern, standby power, pumping, and conveyance will be invoiced to the Safe Drinking Water Revolving Loan fund. Based on the anticipated level of effort, it is assumed invoices will typically be split: 75 percent to the Special Public Works Fund and 25 percent to the Safe Drinking Water Revolving Loan Fund.\_

- 1.2. Kickoff Meeting. Participate in a project kickoff meeting. Prepare agenda and minutes. The purpose of this meeting will be to establish Owner’s design review team, review the overall project schedule including major milestones and meetings, review objectives of the design, discuss available data and published materials that will be made available by the Owner, and review process for deliverables including process for Owner review/approval and invoicing procedures.
- 1.3. Request for Information. Prepare initial request for information for data to be used in the design process.

#### *Owner Responsibilities:*

- Provide meeting space for project meetings.

*Assumptions:*

- Project management budget assumes a project schedule of up to 30 months for design, bidding, and construction.
- Project funding administration and associated reporting requirements are by Owner.
- Kickoff meeting will be in person and include a site visit to the WTP and Terra Fern Pump Station.
- Bi-weekly status meetings will be held virtually for the duration of the project. Each meeting will be 30 minutes in duration and include up to two staff.

*Deliverables:*

- Monthly invoices.
- Kickoff meeting agendas and minutes.
- Request for information.
- Bi-weekly coordination meeting agenda and minutes.

**TASK 2: BASIS OF DESIGN REPORT – TERRA FERN PUMP STATION AND DISTRIBUTION**

*Consultant Responsibilities:*

- 2.1. Site Visit and Field Testing. Consultant will complete a site tour with Owner's operation staff of the pump station to assess general conditions, and note known and observed problems and needs. Consultant will work with Owner to develop a procedure to complete a pump test on the existing booster pumps as the station does not have a flow meter and information on the existing pumps is not available. Consultant will perform pump tests with Owner's support to document existing capacity of the pump station.
- 2.2. Design Criteria. Document design criteria that will serve as basis for design. Consultant will review information provided by the Owner's Representative, field testing data, and the water master plan in developing recommended sizing, type, and number of pumps to meet the Owner's current and future needs.
- 2.3. Water Modeling. Update the existing water model with the increased capacity of the Terra Fern Pump Station. Exercise the computer model to check pressures, headlosses, pipe velocities to identify potential transmission bottlenecks and make recommendations for pressure reducing valves if needed.
- 2.4. Recommended Improvements. Develop concept design drawings showing recommended improvements to the booster station, onsite piping, and distribution system.
- 2.5. Cost Estimate. Provide an opinion of probable cost for the recommended improvements at the Terra Fern Pump Station and Distribution System.
- 2.6. Workshop Meeting. Virtual meeting with Owner to review concepts and alternatives and select preferred alternative for design.
- 2.7. Draft Basis of Design Report (BODR). Prepare draft BODR, following the Oregon Health Authority (OHA) guidelines, documenting the recommended improvements. In addition to the minimum regulatory requirements, BODR to include concept drawings showing conceptual mechanical layout with yard piping, distribution improvements, one-line diagram, and P&ID. Submit to Owner for review.
- 2.8. Final BODR. Incorporate Owner input and submit to OHA for review. Address agency comments into final BODR.

*Owner Responsibilities:*

- Conduct site tour with Consultant; provide access to facilities and records.
- Provide a functioning copy of the existing WaterCAD model of the distribution system. Provide additional demand data, record drawings, operational controls, and other data as requested.
- Review and comment on the Basis of Design Report.

*Assumptions:*

- Surveying, if required, will be completed by the Owner or provided as an additional service.
- Geotechnical field investigations are not anticipated to be required at the Terra Fern site. If improvements are identified that would require a geotechnical investigation, these can be provided as an additional service.
- Field testing of pump capacity is assumed to be completed by performing drawdown tests with the existing reservoir. If additional instrumentation (level sensors, clamp-on flow meters, pressure gauges, etc.) are required, they will be provided by the Owner.
- Recommended improvements are limited to upgrades to the existing pump station, onsite piping, and distribution system. Concept drawings of a new pump station or reservoir improvements can be provided as an additional service.
- Water modeling effort is limited from Alder Creek Finish Water pump station to the outlet of Sandercock Reservoir. Modeling is anticipated to include steady state modeling only.
- Troubleshooting the existing model is limited to one additional day in the field and up to 16 hours of additional modeling.
- Chlorine injection will not be needed at the Terra Fern Reservoir and Pump Station.
- Three phase power is readily available and located adjacent to the site. Existing transformers have sufficient capacity for upgrades at Terra Fern and the WTP.
- Land and easement acquisition, negotiations, and legal descriptions are not included.
- A Basis of Design Report is only needed for the Terra Fern Pump Station and distribution system. The Conceptual Design Report, prepared by Owner's Representation, can be used for documenting the basis of design for the Alder Creek Water Treatment Plant Upgrades. DEQ and OHA submission and approval is by the Owner. Therefore, an updated Basis of Design Report for Alder Creek Water Treatment Facility will not be prepared.
- Consultant can rely on the flow analysis and future flow projections provided by the Owner or as documented in the Water Master Plan.

*Deliverables:*

- Agenda and minutes for virtual online Meeting.
- Draft and Final BODR.

**TASK 3: FINAL DESIGN – ALDER CREEK WTP**

*Consultant Responsibilities:*

- 3.1. 30% Design Plans. Once Owner has provided the proposal documents for the pre-purchase of the LPMF system, Consultant will prepare and submit 30% design documents to the Owner including general, site, utility, mechanical, electrical, and P&ID. Coordinate location of treatment skids, chemical storage, pumps, piping layout, spacing, electrical equipment, generator, security, equipment access, and HVAC equipment, with the Owner. Develop electrical load list for new and existing equipment for use in evaluating capacity of existing transformer. If a new transformer is required, pre-purchase services can be provided as part of Task 7 – Management Reserve.
- 3.2. 60% Design Plans and Specifications. Consultant will prepare and submit 60% design documents to the Owner. Design drawings to include general, site civil, general structural and architectural, mechanical, electrical (one-line), and instrumentation and control (P&ID) sheets. In addition, address 30% design review comments in the 60% submittal.  
  
Prepare table of contents for technical specifications.  
  
Prepare list of long lead items for discussion with the Owner. If Owner elects to pre-purchase equipment/materials, pre-purchase services can be provided as part of Task 7 – Management Reserve.
- 3.3. 90% Design Plans and Specifications. Address 60% design review comments in the 90% submittal. Advance design to 90% and submit design review drawings and specifications to the Owner. Drawings to

include survey, site civil, structural, architectural, HVAC, mechanical, electrical, and instrumentation and control plan sheets.

Instrumentation and control plan sheets will generally include a network layout drawing, control panel layout drawings will be prepared following the City's SCADA Master Plan and standard equipment, piping and instrumentation diagrams (P&ID), wiring diagrams, input/output schedule, and the instrumentation schedule.

Technical specifications will be prepared to detail the materials, processes, and products that are to be used in the construction. Additionally, Consultant will assist to Owner in preparing Division 0 and Division 1 Specifications.

- 3.4. Review Workshop Meetings. Participate in 30%, 60%, and 90% design review workshop meetings.
- 3.5. Agency Submittal(s). Agency design checklists will be completed and submitted along with the 90% plans and specifications to Agency for review.
  - 3.5.1. Owner's Representative to lead land use permitting. Consultant will provide figures for Owner's use at 30% design.
  - 3.5.2. Submit to Building Department at 90%, address comments and resubmit at 100% (Trade permits will be obtained by Contractor).
  - 3.5.3. Submit to Oregon Health Authority at 90%, address comments and resubmit at 100%.
- 3.6. Final Documents. Upon Owner and Agency review, Consultant will incorporate appropriate revisions into a final set of stamped drawings and specifications that will be used for bidding. Respond to Agency comments and provide resubmittal to approving Agency(ies) if required.
- 3.7. Opinion of Probable Cost. Prepare an ACE Class 3/4 opinion of probable cost for the project at 60% and final design.

*Owner Responsibilities:*

- Review and provide one set of written consolidated comments on the 30%, 60%, and 90% design deliverables.
- Provide legal and risk reviews of the bid documents. Assist in identifying permits and approvals for which Contractor will be responsible.
- Provide written review comments from Owner's SCADA integrator.
- Owner to provide Front-End Construction Contract Documents and Division 1.
- Pay for any associated permitting fees not assigned to the Contractor.

*Assumptions:*

- Drafting will be completed on 22"x34" sheets.
- Approved pre-purchased submittals for the LPMF system will be available prior to starting 60% design.
- Owner is responsible for reviewing and approving the pre-purchased LPMF equipment submittal.
- Project funding requires construction materials to meet American Iron and Steel (AIS) requirements. BABA is not required as part of the project funding.
- Control design scope assumes that Owner's Representative will be performing the integration services.
- The project will be bid as a single project but will have two bid forms (one for conveyance and one for treatment) for separation of funding.
- Owner's Representative (Stantec) will provide front end documents that include standard bidding forms, contract forms, construction forms, and general conditions based on the 2018 edition of EJCDC and prepare draft Division 01 documents for Consultant review/comment.

- Terra Fern pump station and distribution design upgrades are not included in this task, but are anticipated to be included in the management reserve task (Task 7).
- Existing power service at Alder Creek has sufficient capacity.
- Project will not include irrigation or landscaping of the site. Services of a licensed landscape architect will not be required. Disturbed surfaces will be restored with grass seed, gravel, or similar to existing condition as appropriate.
- Owner is responsible for land use permitting.
- Meetings are virtual/online
- Extensive architectural features and architectural rendering are not included.
- Contractor will be required to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP), prepare traffic control plans, and secure associated permits.
- Shoring and dewatering (if required) will be designed by the Contractor.
- Trade Permits will be obtained by the Contractor.
- Time for correspondence and meetings, due to an Owner or Contractor initiated change in the project design, preparing additional bidding-related documents (i.e. contract prequalification and alternative bids), participating in project peer reviews or value engineering, and/or project support above and beyond that described is considered an additional service.
- Equipment pre-purchase services, if required, will be provided as part of Task 7 – Management Reserve.
- Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor’s methods of determining prices, or over competitive bidding or market conditions, the Consultant does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by the Consultant.
- AutoCAD is to be used to prepare drawings and AutoCAD Civil 3D or Revit may be used for the site and building design. Spreadsheets will be prepared in Microsoft Excel and text documents in Microsoft Word.
- Permitting services are limited to drawing and figure preparation for submitting the Land Use Application. All other permitting services, including preparation of the Land Use Application, are by Others.
- Public involvement is not included.
- Reviews will be completed in Bluebeam thus no hard copies of the deliverables will be provided.

*Deliverables:*

- Land use permitting figures for Owner’s use.
- 30% design drawings, including one PDF submittal (prepared in 22”x34”).
- 60% design drawings and specifications, including one PDF submittal (prepared in 22”x34” reviewed in 11”x17”).
- 90% design drawings and specifications, including one PDF submittal (prepared in 22”x34”).
- 100% stamped design package, including one PDF submittal (prepared in 22”x34” reviewed in 11”x17”).
- Opinion of probable cost.
- Building permit submittal.

**TASK 4: SERVICES DURING BIDDING**

*Consultant Responsibilities:*

- 4.1. Pre-Bid. By Owner’s Representative.
- 4.2. Addenda. If required, respond to bidder questions, and prepare up to three addenda during the bidding process to clarify, correct, or change the issued documents.
- 4.3. Bid Opening. By Owner’s Representative.

#### 4.4. Bid Evaluation. By Owner's Representative.

##### *Owner Responsibilities:*

- Prepare Advertisement and publish. Make arrangements and pay for the advertisement of the project.
- Distribute bidding documents including addenda to bidders.
- Attend and chair the pre-bid meeting.
- Attend and chair the bid opening meeting.
- Provide legal services if required.
- Award the bid.

##### *Assumptions:*

- One bid package and one bidding process is assumed. If rebidding or addressing bid protests is required, these services will be provided as an additional service.
- Consultant's efforts are limited to responding to questions and preparing addenda as requested by Owner.
- Terra Fern pump station and distribution design upgrades are not included in this task, but are anticipated to be included in the management reserve task (Task 7).

##### *Deliverables:*

- Prepare addenda for Owner's use.

### **TASK 5: CONSTRUCTION PHASE SERVICES**

##### *Consultant Responsibilities:*

This task includes the professional services to support the Owner and Owner's Representative during the construction of the project by one prime Contractor. Consultant's level of effort during construction is often affected by the selected Contractor. The fee estimate, level-of-effort projections, and schedule assumptions represent Consultant's professional judgement. As activities progress, it may become apparent some modifications to this scope are necessary due to changes in the Contractor's schedule and work. Consultant will advise the Owner's Representative of such issues and any fee and/or schedule impact prior to implementing revised activities. This task will include the following:

- 5.1. Construction Contract Administration. By Owner's Representative.
- 5.2. Contract Documents. Incorporate addenda and prepare construction documents for distribution to Owner and Contractor.
- 5.3. Pre-Construction Meeting. A pre-construction conference will be chaired by the Owner's Representation and attended by the Owner, Consultant, the Contractor, major suppliers, and subcontractors. The purpose of this meeting will be to establish lines of communication as well as procedures and timelines for the job. Owner's Representative will prepare meeting agenda and meeting notes to be distributed to attendees.
- 5.4. Construction Meetings. Attend monthly construction meetings (virtually) as requested by the Owner's Representative.
- 5.5. Contractor Schedule. By Owner's Representative.
- 5.6. Submittals. Review Contractor's submittals for general conformance to the specified materials and methods noted in the design plans and specifications. Reviews will not specify Contractor techniques, sequencing, procedures, means or methods of construction or to safety precautions.
- 5.7. Test Results. By Owner's Representative.
- 5.8. Requests for Information (RFIs). Respond to RFIs from Contractor or Owner's Representative and provide clarification of Contract Documents.
- 5.9. Pay Requests. By Owner's Representative.
- 5.10. Change Orders. Review change order and work directive requests.



- 5.11. Field Orders. Prepare and issue field orders requiring minor changes in the work.
- 5.12. Site Visits. As requested by Owner's Representative, Consultant will participate in up to ten (10) site visits during periods of active construction.
- 5.13. Substantial and Final Completion Inspections. Hold a Substantial Completion inspection with Owner Staff for the purpose of issuing a Notice of Substantial Completion to the Contractor. This Substantial Completion inspection will include the development of a "punch-list" for the Owner to use as the Contractor's final work to be completed. A final walkthrough will be held at the site to check that punch list items have been completed.

*Owner Responsibilities:*

- Review and process Contractor pay requests, change orders and other construction related documents.
- Provide Construction Contract Administration throughout the duration of construction.
- Provide day-to-day construction observation. Seek interpretation of the Contract Documents as required. Alert Consultant of any concerns observed.

*Assumptions:*

- One member of the Consultants team will attend the pre-construction meeting in person.
- Work will be performed by one General Contractor.
- If required, Material testing services such as soil compaction, concrete, asphalt, steel, pipe pressure, and bacteria will be provided by the Owner and reviewed by the Consultant. Owner shall also be responsible for specialty inspection services as outlined in the contract documents.
- Budget assumes 14 months of active construction.
- Substantive design and other technical services in connection with work change directives, change proposals, and change orders requested by Owner will be completed as an additional service. Similarly, use the of the additional services budget will apply to extended services arising from (a) the presence at the site of any constituent of concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the work, (c) damage to the work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
- Claims or legal support services, if required, will be provided as an additional service.
- Consultant shall not be responsible for any decision made regarding the Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Consultant.
- Budget also assumes 180 submittals reviews, 90 resubmittal reviews, 60 RFIs, 10 field orders, and 5 change orders. Consultant will notify the Owner that the Consultant is commencing an additional service when any of these levels have been reached.
- Terra Fern pump station and distribution design upgrades are not included in this task, but are anticipated to be included in the management reserve task (Task 7).

*Deliverables:*

- One full size (22" x 24") electronic copy in PDF format of the Contract documents and drawings and will be delivered to Owner.
- Submittal and RFI reviews.
- Substantial completion checklists.

## **TASK 6: PROJECT CLOSEOUT**

### *Consultant Responsibilities:*

- 6.1. O&M Manual. Consultant will receive from the Contractor an operation and maintenance manual (O&M) that includes all major equipment and an O&M from the LPMF supplier. Consultant to provide brief supplement outlining the purpose, design criteria, operations/controls (including normal operations, theory of operation, pump isolation), and a summary of recommended preventative maintenance activities. Consultant will submit a draft to the Owner. Upon receiving comments, Consultant will address comments and submit final O&M.
- 6.2. Record Drawings. The Record Drawings will be developed using the Contractor maintained set of “Red-line” drawings and will show locations of installed components of the Project as identified by the Contractor. These Record Drawings will show significant changes made during construction. Contractor drawings will be reviewed, noted and submitted to Owner. Record drawings will be provided to Owner as updated electronic CAD files and a PDF of Construction Drawings.

### *Owner Responsibilities:*

- Provide information for O&M manual as requested by Consultant.
- Provide written comments on draft O&M manual provided.
- Provide written comments on red-lined drawings from Contractor.

### *Assumptions:*

- The Contractor will prepare operation and maintenance manual information for the equipment and submit it to the Consultant.
- The operation and maintenance manual for the LPMF will be prepared by others.
- Because Record Drawings are based on unverified information provided by other parties, the Consultant does not warrant their accuracy.
- Project services are assumed to end at the final completion date for construction. Ongoing support services and 11-month warranty service, if requested by the Owner, will be provided separately as an additional service.
- Terra Fern pump station, reservoir and distribution design upgrades are not included in this task, but are anticipated to be included in the management reserve task (Task 7).

### *Deliverables:*

- One electronic copy in PDF format of the Operations and Maintenance Manual provided to the Owner.
- One electronic (PDF) copy of construction plans marked “Record Drawings” and electronic CAD files, if requested.

## **TASK 7: MANAGEMENT RESERVE (ADDITIONAL SERVICES)**

From time to time the Owner may have additional tasks related to the project, or additional tasks may be encountered that are not identified in this scope of work or that may be dependent on decisions not yet made (“Additional Services”). Such additional services may include equipment pre-purchase, design/bidding/construction of recommended Terra Fern Pump Station improvements, and Energy Trust incentives. This task establishes a management reserve for Additional Services. Consultant shall not perform any Additional Services unless authorized in writing by Owner staff (Owner’s Project Manager). Compensation for Additional Services may be based on Consultant’s time and material or a lump sum amount as agreed by Owner and Consultant.

**ADDITIONAL SERVICES (not included in scope of work)**

- Special use permits, public hearings, environmental information, or public meetings beyond those described in the scope of work
- Public outreach or stakeholder outreach support
- Power utility rebate support
- Field investigations, including subsurface investigations to check available record drawings
- Environmental investigations and permitting services
- Detailed quantity surveys of materials, equipment, and labor
- Funding administration
- Construction staking, pot holing/ profiling
- Project site tours
- Easements and right-of-way acquisition support
- Completion of the warranty walkthrough 11-months after the issuance of Substantial Completion to the Contractor

**SCHEDULE**

Consultant anticipates the following project schedule to allow the City to advertise for bidding in September of 2025. The number of days associated with each of the tasks are approximate and assume timely delivery of requested information. Actual schedule may vary:

Task	Schedule	Comments*
Task 2 – Terra Fern Pump Station Basis of Design Report (BODR)	60 days	A draft BODR Report will be submitted to Owner 60 days from completing site visit, field testing, and existing water model. The final BODR will be submitted within three weeks of receipt of review comments.
Task 3 – Alder Creek WTP 30% Design Complete	60 days	30% Design Plans will be completed within 60 days after kickoff meeting and receiving LPMF proposal documents .
Task 3 – Alder Creek WTP 60% Design Complete	60 days	60% Design Plans will be completed within 60 days after receiving Owner comments from the 30% review design meeting and approved LPMF submittal.
Task 3 – Alder Creek WTP 90% Design Complete, Permit Submission to Agency	75 days	90% Design Plans will be completed within 60 days after receiving Owner comments from the 60% review design meeting. A 90% permit set will also be provided to reviewing Agencies.
Task 3 – Alder Creek WTP 100% Design, Final Submission to Agency	45 days	100% Design Plans and Specifications will be completed and submitted to Agency within 45 days after receiving Owner comments from the 90% review design meeting.

\*Schedule assumes Owner and Owner’s Representative reviews are no greater than 10 working days after receipt of submittal from Consultant.

**COMPENSATION**

As compensation for services to be performed by Consultant, the Owner will pay Consultant as described in the following table. Funding is provided via two sources and tasks will be invoiced accordingly as described in Task 1 above. While individual task may exceed their amount, the total authorized budget amount shall not be exceeded without written authorization from the Owner. For time and materials tasks, compensation will be according to the Consultant’s billing rates following the requirements of Exhibit C – City of Sandy Professional Services Commercial Terms, Hourly Labor Rates and Direct Charges.

<b>Task</b>	<b>Type</b>	<b>Amount</b>
Task 1 – Project Management	T&M	\$77,700
Task 2 – Basis of Design (Terra Fern Pump Station)	T&M	\$71,500
Task 3.1 – Final Design (30% plans and workshop)	T&M	\$160,800
Task 3.2 – Final Design (60% plans, cost estimate, and workshop)	T&M	\$267,200
Task 3.3 – Final Design (90% plans, specifications, and workshop)	T&M	\$462,600
<del>Task 3.2</del> – Final Design (100% plans, agency submittals, specifications, cost estimate, and workshop)	T&M	\$252,300
Task 4 – Services During Bidding	T&M	\$44,100
Task 5 – Construction Phase Services	T&M	\$391,400
Task 6 – Project Closeout	T&M	\$53,600
Task 7 – Management Reserve	T&M	\$130,000
<b>Total Cost</b>		<b>\$ 1,911,200</b>

T&M = Time and Materials

## EXHIBIT B – City of Sandy Professional Services Commercial Terms Hourly Labor Rates and Direct Charges

### A. LABOR RATES

- 1) City will pay Consultant on a time and materials basis.
- 2) Labor costs for all Consultant’s staff will be billed using a 3.15 multiplier times the direct labor rate.
- 3) The maximum labor rate for any labor category will be capped at \$300 per hour.

### B. EXPENSES

Expense Type	Rate
General and Administrative Fee (G&A)	7.5%
Mileage	Current IRS Rate
Travel, Lodging, and Subsistence (a)	At Cost plus G&A
Subconsultant and Direct Purchase (b)	At Cost plus G&A
All Other Expenses Directly Attributable to the Project (c)	Included in direct labor multiplier and G&A Fee

(a) Charged only when round trip mileage exceeds 50 miles.

(b) Direct purchase for equipment, supplies, or materials requested by the City.

(c) Includes, hardware, software, health, safety and equipment, PPE, and employee expenses.

### C. BILLING FOR TRAVEL

Consultant may charge labor costs as described in Section A for travel from its offices to work sites and meetings during normal business hours. Consultant will not bill for a mobilization, trip charge, or minimum charge for meetings or site visits.

### D. Stand-by Time Policy

Consultant will not charge for stand-by-time.

### E. OVERHEAD, SUPPORT, AND ADMINISTRATIVE CHARGES

Consultant may charge administrative and clerical labor costs as described in Section A for direct project-related work including word processing, document preparation, printing and binding, project filing, billing preparation and processing or other project-related accounting functions, documentation per funding agency requirements and related work.

### F. RATE CAP ADJUSTMENT

The rate cap establishing in Section A maybe adjusted annually for the CPI-W US City Average Percent Change per year (previous 12-month) for each period of contract (Jan 1 to Dec 31).

[https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm)

## Exhibit C

### Contract Clauses for contracts with Professional Services Contractors (i.e. Consultants) for projects funded by Safe Drinking Water financing

#### Contract Clause Language

##### 1. SAM Registration

All entities that enter into contracts with a Safe Drinking Water Revolving Loan Fund recipient (i.e. contractors) must have a SAM Registration. The links below can be provided to contractors if they have not already addressed this requirement.

SAM Registration: <https://www.sam.gov/SAM/>

NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed

##### 2. Source of Funds

Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through Business Oregon and a partnership of Local and/or Private Funds.

##### 3. Whistleblower

Contractor receiving SDWRLF funds shall under or through this contract to, post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).

##### 4. Non Discrimination

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

##### 5. Termination for Cause and for Convenience & Breach of Contract

Contractor shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. In addition, contractor shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

##### 6. Intellectual Property

Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual property developed under this contract. Contractor shall secure from third parties the

same license in the name of the U.S. E.P.A. regarding any intellectual property developed by third parties as subcontractors to perform this project, or developed under contract with the Contractor specifically to enable Contractor's obligations related to this project.

**7. Inspections; Information** (language to be included in all contracts and subcontracts:)

Contractor shall permit, and cause its subcontractors to allow City of Sandy, the State of Oregon, the federal government and any party designated by them to:

- (1) Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
- (2) Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.

Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed.

**8. American Iron Steel**

The Contractor acknowledges to and for the benefit of the Alder Creek Water Treatment Plant ("Water System") and the State of Oregon (the "State") that subsequent construction activities funded under this agreement are being funded with monies made available by the Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement"). The Contractor hereby represents and warrants to and for the benefit of the Water System and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, and (b) all engineering design, plans and specifications, and cost estimates shall facilitate compliance with the American Iron and Steel Requirement. While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

**9. Build America Buy America Act (BABA)**

The Contractor acknowledges to and for the benefit of the City of Sandy ("Owner") and the State of Oregon (the "State") that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of

compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or the State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or the State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, any damages owed to the State by the Owner). If the Contractor has no direct contractual privity with the State, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

**10. Prohibition on the Use of Federal Funds for Lobbying** (Certification Regarding Lobbying form follows, for any contracts in excess of \$100,000)

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(form follows)



**CERTIFICATION REGARDING LOBBYING**

(Awards to Contractors and Subcontractors in excess of \$100,000)


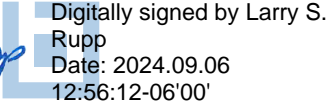
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed	  <p>Digitally signed by Larry S. Rupp Date: 2024.09.06 12:56:12-06'00'</p>
Title	President/CEO
Date	9/6/2024