

**City of Thornton
Thornton Water Project
Source Water Pump Station, Project No. 12-777XP**

**Volume 5 of 7
Owner's Purchase Agreements**

- a. 12-777J1 Pre-Purchase VFDs with Energy Management Corporation
- b. 12-777J2 Pre-Purchase Electric with Sonepar Mountain Holdings, LLC
d/b/a QED
- c. 12-777J3 Pre-Purchase Pumps with Flowserve US Company

PURCHASE AGREEMENT

3/26/2026

This Purchase Agreement is made and entered into on _____, (“Effective Date”) by and between the **City of Thornton**, a Colorado home rule municipality, in the state of Colorado (hereinafter, “Buyer” or “Thornton”) and **Energy Management Corporation** (hereafter, the “Manufacturer”). Thornton and Manufacturer hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

I. RECITALS

- A. Buyer desires to have Manufacturer manufacture certain equipment (as defined below) exclusively for Buyer using the Specifications provided by Buyer’s engineer (as identified below); and
- B. Manufacturer agrees to manufacture the Equipment for Buyer on the terms and conditions set forth in this Agreement; and
- C. Buyer will, in turn, purchase from Manufacturer and associated equipment, parts, and documentation from Manufacturer’s facility as such items are more particularly described in Exhibits A and B (under separate cover), which by this reference made a part of this Agreement (collectively, the “Equipment”). The Equipment shall include only those items described in Exhibits and A and B; and
- D. Buyer has retained Carollo Engineers (“Engineer”) to design the Equipment in accordance with the Technical Specifications described in Exhibit A (“Equipment Specifications”), and Plans described in Exhibit B (“Equipment Plans”); and
- E. Buyer will provide to Manufacturer the Equipment Specifications prepared by Engineer for the sole purpose of manufacturing the Equipment required by Buyer subject to the terms and conditions, set forth in this Agreement; and
- F. Buyer, having all the rights and legal ownership assigned by and purchased from the Engineer, hereby grants and authorizes the Manufacturer to fabricate, furnish and deliver the Equipment as specified in Exhibits A and B to Buyer in accordance with the terms and subject to the conditions set forth in this Agreement; and
- G. Manufacturer hereby agrees to manufacture and deliver to Buyer the Equipment and associated equipment, parts, and documentation identified in Exhibits A and B in accordance with the terms and subject to the conditions set forth in this Agreement; and
- H. Moreover, for purposes of this Agreement, Manufacturer is a merchant dealing in the particular goods that are the subject of this Agreement and Buyer is a nonmerchant as defined by the Uniform Commercial Code in effect in Colorado on the date of execution of this Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS & CONDITIONS

- A. **Notice to Proceed.** Upon receipt of a written Notice to Proceed from Thornton and Manufacturer will begin to furnish all of the labor, supplies and materials, equipment, and any other facilities or resources required to perform and complete the work authorized by the Notice to Proceed to complete the Equipment. The Equipment will be manufactured by the Manufacturer in the best and most workmanlike manner by qualified, careful and efficient workers, and in conformity with the best standard manufacturing practices.
- B. **Submittal, Review, Manufacture and Acceptance of Equipment Built to Buyer's Specifications.**
1. As used in this Agreement, the term "Equipment" shall mean the equipment described in Exhibits A and B attached hereto and made a part hereof to be manufactured by Manufacturer exclusively for Buyer in accordance with this Agreement, as may be modified and improved at the request of Buyer.
 2. The designs and drawings provided by the Engineer, which have been previously furnished by Buyer to Manufacturer, and receipt whereof by Manufacturer is hereby acknowledged. It also includes any and all improvements, changes and/or modifications to the Equipment, which the parties hereto may make upon mutual agreement during the term of this Agreement.
 3. Manufacturer shall manufacture in its own facilities or those of sub-contractors of its designation and remit to Buyer the Equipment, as defined in Exhibits A and B, on the basis of Buyer's Engineering specification and drawings referred to above, and incorporating such changes and improvements therein as the parties hereto mutually determine and agree upon from time-to-time. The parties agree that final assembly, final test and inspection, and packing will at all times be done by Manufacturer in its own facilities.
 4. Manufacturer shall complete and promptly furnish Buyer the Equipment no later than [the prescribed dates in the table of Section II. E, below, or unless by another mutually agreed upon date.

5. The Engineer of Buyer and Manufacturer shall jointly confirm all specifications in sufficient detail necessary for the production of the Equipment, which specifications shall include the quality of the material used and the performance standards of the Equipment to be manufactured by Manufacturer. Such specifications, when completed, shall be incorporated into this Agreement as an integral part hereof, and no changes may be made to such specifications without the written consent of both Buyer and Manufacturer.
6. The Equipment manufactured and sold by Manufacturer to Buyer hereunder shall conform to the specification established in the manner described above, and shall be marked as Buyer may determine. Buyer agrees that a separate marking of Manufacturer's trademark may also be made in such place and manner as the parties hereto shall determine and include in the specifications.
7. Upon the terms and subject to the conditions contained in this Agreement, by the Date (defined below), Manufacturer shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall receive, inspect, approve, and purchase from Manufacturer the Equipment. As the term is used in this Agreement and the exhibits, "Equipment" means and includes all copies of all of Manufacturer's records and files which relate to any of the Equipment and its parts, including but not limited to the following: (i) operations, maintenance, environmental and engineering records; (ii) facility records; (iii) accounting files and operating statements and files; (iv) any and all contracts, purchase orders or other agreements with third parties including those with its subcontractors and suppliers and (v) any other records or files in the possession of Manufacturer relating to the Equipment; (vi) save and except for records the disclosure of which would jeopardize any trade secrets, intellectual property information available to Manufacturer concerning such records, and would cause Manufacturer to breach its confidentiality obligation to which it is bound, or would violate any applicable law.

C. Modifications and Changes to the Equipment.

1. A change to the Equipment is any change or modification that is materially different from, or in addition to the Equipment described in Exhibits A and B of this Agreement.
2. Any change, including any increase of the Compensation, shall only be effective or paid from an authorized Purchase Order or written amendment executed by Buyer's City Manager ("City Manager") or City Manager's designee(s). If Manufacturer proceeds without such written authorization, then Manufacturer shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit, or implied contract.

D. **Testing and Inspection of the Equipment.** Upon receipt of the Equipment Buyer shall inspect the Equipment and perform such other tests and inspections deemed appropriate by Buyer in order to assess the integrity and condition of the Equipment, provided that any and all such testing and inspections does not damage the Equipment before acceptance. Manufacturer shall have the right to have a representative present for any such testing, all of such testing shall be performed in compliance with all applicable laws, and Buyer shall deliver to Manufacturer a copy of the results or reports prepared in connection with such testing.

E. **Manufacturer’s Equipment Schedule Dates.**

1. The Milestone dates (see table below), including the submittal of Specifications and Drawings, the delivery of Equipment, and the furnishing of Special Services as stated in this Agreement, means that time is of the essence.
2. The following schedule is the designated timeline (“Milestone Dates”) for the production of the Equipment:

Milestone Dates		
First Milestone Date for Initial Submittal of Shop Drawings	28 days	From the Notice to Proceed Date
Second Milestone Date for Completion and Acceptance of Shop Drawings by Manufacturer	84 days	From the Notice to Proceed date
Delivery of Equipment to Destinated Location by Manufacturer	434 days	From the Notice to Proceed Date
Acceptance of Equipment by Buyer or Buyer’s Engineer	7 days	From Delivery to Designated Location
Commence Special Services for Goods, as needed	434 days	From the Notice to Proceed Date
Complete Special Services for Equipment	850 days	From the Notice to Proceed Date
Final Inspection and Final Acceptance after Delivery of Equipment and Special Services as needed	850 days	From the Notice to Proceed Date

3. **Submittal of Specifications and Drawings:** Buyer or the Engineer on behalf of Buyer will submit all Specifications and Drawings required by the Agreement to Manufacturer for review and approval.

4. Manufacturer's Review: Manufacturer will review Specifications and Drawings for approval or if not approved, return them with comments regarding what information is needed for approval no more than fourteen (14) Calendar Days after submittal of Specifications and Drawings to Manufacturer. If additional time is needed because the submittals were unsatisfactory, Manufacturer shall resubmit them within fourteen (14) Calendar Days after response from Buyer or the Engineer, or within such period of time as agreed to by the Parties. However, Resubmittals shall be limited whenever possible.

F. Delivery.

1. Manufacturer shall deliver the Equipment F.O.B. to the designated location. Manufacturer shall tender of delivery of the Equipment to a common carrier acceptable to Buyer. Buyer shall pay all approved freight, insurance, packing and other transportation charges for satisfactory delivery of Equipment ("Transportation Costs"). Manufacturer may, but is not obligated to pay in advance such charges with Buyer's consent, and Buyer will reimburse Manufacturer for the Transportation Costs upon receipt of evidence of payment by Manufacturer.
2. In connection with the delivery of the Equipment, Buyer may designate in writing, not less than ten (10) Business Days prior to the shipment date, the carrier for shipment, the amount and type of insurance coverage required of the.
3. If Buyer fails to designate any or all such items, Manufacturer, at its reasonable discretion, will decide the carrier for shipment, the amount and type of insurance coverage required to ship the Equipment. Manufacturer shall select, at its reasonable discretion, the type and amount of crating needed to ship the Equipment to the agreed to designated location specified by Buyer .

G. Compensation.

1. Equipment Purchase Price. After final acceptance by Buyer, Buyer shall pay Manufacturer **one million seven hundred ninety thousand five dollars \$1,790,005.00** ("Purchase Price") for the Equipment in accordance with this Agreement.
2. Special Services. The total Thornton shall pay, and Manufacturer will receive for furnishing any additional materials or services is **one million seven hundred ninety thousand five dollars \$1,790,005.00** based on the table below, which is subject to adjustment by a Change Order and/or written amendment as approved by Buyer. The quoted amount reflected in the table below is based on Thornton's tax-exempt status. In the event Thornton fails to provide a valid tax exemption certificate for the state to which the product will be shipped, applicable sales tax will be added to the

total amount due, and such adjustment shall not require a Change Order or written amendment.

3. Any Compensation herein is subject to adjustment but only by a written Change Order authorized by Buyer in writing in accordance with its current policies.

Unit Price Equipment and Special Services					
Item No.	Description	Unit	Quantity	Unit Price	Extended Price
1	VFD for 3,000 HP Pumps and Motors (Tag Numbers VFD-305, VFD-306)	EACH	2	\$572,718.75	\$1,145,437.50
2	VFD for 600 HP Pumps and Motors (Tag Numbers VFD-302, VFD-303)	EACH	2	\$322,283.75	\$644,567.50
Total					\$1,790,005.00

H. **Payment Procedures.**

1. Manufacturer shall submit invoices to ap.invoices@ThorntonCO.gov at the following percentages for each line item indicated below based on successful completion of each specified Milestone:

Milestone Payments	Percentage of Lump Sum
Approval of Submittals	10%
Beginning of Factory Manufacturing	25%
Delivery of materials to project site	60%
Completion of Commissioning/training	5%
Total	100%

III. MISCELLANEOUS TERMS

A. **Title and Risk of Loss.**

1. The risk of loss from any casualty to the Equipment and its related parts from any cause shall be on Manufacturer until delivery to the designated location

and Buyer's final approval, or until insurance coverage for the full value of the goods against loss from any cause during transportation is procured in favor of Buyer by either party from Manufacturer's insurance company or any other insurer acceptable to Buyer.

2. Title to and risk of loss, damage and destruction of the Equipment shall transfer from Manufacturer after delivery to the designated location and Buyer's final approval .

B. Manufacturer's Warranties

1. Manufacturer warrants to Buyer that, for a period of twenty-four (24) months after delivery, the Equipment will conform in all material respects to the Technical Specifications and Project Plans, respectively, attached hereto as Exhibits A and B and will be free from defects in materials and workmanship. Manufacturer's obligation under this warranty is limited to, at Manufacturer's option, repairing or replacing, at Manufacturer's option, at Manufacturer's facility or at the location of the Equipment, any Equipment or parts thereof that Manufacturer determines not to conform to this warranty.
2. Buyer shall promptly notify Manufacturer in writing of any alleged defects in the Equipment and specifically describe what is the alleged defect(s). Manufacturer shall have no obligations under this warranty with respect to any defect unless it receives notice and a description of the alleged defect by no later than thirty (30) Calendar Days following the expiration of the warranty period.
3. Upon receipt of a notice of an alleged defect, Manufacturer shall perform the warranty service at the location of the Equipment or shall instruct Buyer as to the part or parts of the Equipment that Buyer shall ship and return to Manufacturer for repair or replacement. Manufacturer will pay all costs to pack and ship the repaired or replaced Equipment back to Buyer and will reimburse Buyer for its costs to ship and transport Equipment to Manufacturer, when Manufacturer determines the cause of the defect; otherwise, if it the defect is not the fault of Manufacturer, Buyer shall be responsible for paying all the costs of shipping and transportation.
4. Manufacturer represents and warrants that it has title to the Equipment and all its parts to be conveyed hereunder and has the right to sell the same and at the time of delivery, the Equipment shall be free of any security interest, or all liens and encumbrances whatsoever.

- C. Infringement Indemnification.** To the fullest extent permitted by law, Manufacturer will defend, indemnify, and hold harmless Thornton, its officers, agents and employees, at its own expense, any suit or proceeding against Buyer for the direct infringement of United States patents and trademarks of the Equipment purchased from Manufacturer hereunder. Manufacturer shall pay all damages and costs finally awarded against Buyer because of the infringement caused by Manufacturer; provided, however, Manufacturer shall not be obligated to defend or be liable for

costs or damages awarded in any suit or proceeding for infringement of patents by any other products, or any completed equipment, system, assembly, combination, method or process, in which, or in the manufacture or testing of any Equipment purchased from Manufacturer that may be or has been used; and provided further Manufacturer's obligations to pay such damages and costs shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged Infringement and Buyer continues to use it, unless Manufacturer gives to Buyer written consent to continue using the alleged infringing Equipment or Equipment part. Other than for the legal obligation to defend Buyer against a third party infringement claim, Manufacturer's liability hereunder shall not exceed the purchase price paid by Buyer for the infringing Equipment, and Manufacturer shall not be liable for any collateral, incidental or consequential damages awarded against Buyer caused Buyer's negligence. Besides this obligation, Buyer may seek any and all other legal remedies available to Buyer and this obligation shall not be considered its exclusive remedy.

D. **Insurance.** Manufacturer shall procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:

1. **Workers' Compensation Insurance.** Workers' compensation insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Evidence of qualified self-insured status may be substituted.

2. **Commercial General Liability Insurance (MINIMUM LIMITS)**

a.	Each Occurrence	\$4,000,000
b.	Products/Completed Operations Aggregate	\$4,000,000
c.	Personal and Advertising Injury	\$4,000,000
d.	General Aggregate	\$8,000,000

The policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Manufacturer; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, liability resulting from explosion, collapse, or underground exposures. The coverage shall not exclude faulty workmanship as a covered occurrence.

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

3. **Automobile Liability Insurance.** Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than

one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Manufacturer's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.

4. Additional Insured. Manufacturer shall name Buyer, its officers, agents, and employees as additional insureds with respect to the Commercial General Liability, Auto Liability and, if required, Builder's Risk and Installation Floater coverages above.
5. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded along with the Additional Insured Endorsement to Buyer by Manufacturer's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Buyer **prior to commencement of any Work under this Agreement**. The initial completed Certificate of Insurance and Additional Insured Endorsement shall be sent to:

City of Thornton
Patrick Hinterberger, Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton's Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date. Indicate "Renewal COI" in the email subject line. Buyer reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Manufacturer agrees to execute any and all documents necessary to allow Buyer access to any and all insurance policies and endorsements pertaining to this particular Project.

6. Failure to Insure. Failure on the part of Manufacturer or subcontractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Agreement upon which Buyer may immediately terminate this Agreement, or at its discretion, Buyer may procure, or renew any such policy, or any extended reporting period thereto, and may pay any and all premiums if required, and all monies so paid by Buyer shall be repaid by Manufacturer to Buyer upon demand, or Buyer may offset the cost of the premiums against any monies due to Manufacturer from Buyer.
7. Other Insurance Requirements.
 - a. Manufacturer shall cause any Subcontractor to procure and maintain adequate levels of insurance coverage for Workers' Compensation, Commercial General Liability, Automobile Liability, and other coverages Manufacturer may require. For Commercial General Liability and Automobile Liability insurance of any subcontractor,

Buyer will be named as an additional insured. Manufacturer shall prepare a schedule of required coverages for each of its Subcontractors and shall submit such schedule to Buyer prior to any Subcontractor commencing any Work on a Task Assignment under this Agreement. Such coverages for any Subcontractors shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Manufacturer.

- b. Manufacturer shall procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Manufacturer pursuant to this clause. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- c. Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Buyer and Manufacturer against other insurable hazards relating to the Work to be done.
- d. Every policy required above shall be primary insurance and any insurance carried by Buyer, its officers, or its employees shall be excess and not contributory insurance to that provided by Manufacturer. Manufacturer shall be solely responsible for any deductible losses under the policies required above.
- e. Manufacturer shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- f. All policies shall include a provision that the coverages afforded under the policies shall not be canceled, terminated, or materially changed prior to the natural termination date until at least thirty (30) Calendar Days prior written notice has been sent to Buyer. The Certificate(s) shall indicate the form used, if any, under which this provision is included.
- g. Waiver of Subrogation. All insurance policies required of Contractor shall include a waiver of any right of subrogation written in favor of the Parties.

E. **Governmental Immunity**. The Parties hereto understand and agree that Buyer, its officers, and its employees, are relying on, and do not waive or intend to waive by

any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to Thornton, its agents, officers, or employees.

F. **Independent Contractor.**

1. It is understood and agreed by and between the Parties that the status of Manufacturer shall be that of an independent contractor and is only retained on a contractual basis to perform the services for limited periods of time and it is not intended, nor shall it be construed, that Manufacturer or its employees or subcontractors under Chapter VII of the City Charter, or Chapter 54 of the City Code, are considered employed by Thornton for any purpose whatsoever.
2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Manufacturer nor** any employee, agent or sub-contractor of Manufacturer **is not entitled to unemployment insurance benefits from the City of Thornton and the only unemployment compensation coverage shall be provided by Manufacturer or some other entity besides Thornton, that Manufacturer is not entitled to Workers' Compensation benefits from Thornton and that Manufacturer is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph must be consistent with Manufacturer's insurance obligations that are set forth in this Agreement.

G. **Grounds for Termination.** Thornton may issue a written Notice of Intent to Terminate for the reasons that follow:

1. **Termination for Convenience.** In the event this Agreement is terminated for convenience, Manufacturer shall only be entitled to the Work it has satisfactorily completed up to the date of termination. Thornton is only responsible to pay Manufacturer for all Work previously authorized and satisfactorily completed prior to the date of the Notice of Termination.
2. **Termination for Cause\Default.** If Manufacturer has substantially or materially breached the terms of this Agreement, or Thornton declares Manufacturer is in "Default," shall be cause to terminate this Agreement and Thornton may seek to exercise all available legal and/or equitable remedies.
3. **Termination for Non-Appropriations.** In the event that the Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may terminate this this Agreement at the beginning of the fiscal year for which funds have not been appropriated upon prior written notice as provided herein. In such event, Thornton shall remain responsible for payment of all services performed, obligations incurred, and costs reasonably committed by Contractor prior to the effective date of termination. This includes, but is not limited to, payment

for delivered or installed equipment, materials ordered or procured for the project, non-cancelable commitments, demobilization costs, and any other costs incurred by Contractor that cannot reasonably be mitigated or recovered as a result of such termination. Upon such payment, Thornton shall be released from further obligations under this Agreement.

- H. **Venue / Law / Statute of Limitations.** This Agreement shall be governed by the laws of the State of Colorado, notwithstanding its choice of law principles. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to the Agreement or the Services asserted by Manufacturer against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).
- I. **Notice.** Any notice or communication between Manufacturer and Thornton which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class, United States mail, addressed as follows:

THORNTON: City of Thornton
Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

MANUFACTURER: Energy Management Corporation
Attn: Brad Debenham
501 West 700 South
Salt Lake City, UT 84101

- J. **Assignment.**
1. Thornton has the right to assign this Agreement and the furnished Equipment and Special Services, but only to a person or entity with sufficient and ability to satisfactorily perform and assume all of Thornton's rights, duties and obligations this Agreement requires, and Manufacturer hereby consents to such assignment.
 2. The Assignment Agreement, which is attached hereto as Exhibit C – Assignment Agreement, must be signed by Thornton, Manufacturer and Contractor.
 3. Upon assignment by Buyer, the following provisions shall apply:
 - a. After this Agreement is signed by Buyer ("Assignor"), it will be assigned to the construction contractor ("Assignee") designated by Thornton. The assignment will be effective on the date the construction contract between Thornton and Contractor is signed, which is supposed to occur in or around the second quarter of 2026.

On the effective date of assignment, all references in this Agreement to “Buyer” or “Thornton” shall be replaced with Assignee’s name.

- b. Upon the assignment of this Agreement, Assignor shall be relieved of all its rights, duties, and obligations set forth in this Agreement, other than those exceptions made therein. Thereafter, Manufacturer shall become the supplier of Assignee, and all rights, duties, and obligations of Assignor shall inure to, and become the rights, duties, and obligations of Assignee as set forth in this Agreement.
4. After assignment:
- a. The Drawings and Specifications, and any modifying Addenda will by this reference become the “Contract Documents” in the Construction Contract.
 - b. “Contract Documents” should the Drawings and/or Specifications need to be modified, then Manufacturer and Assignee shall enter into and execute a Change Order in accordance with this Agreement.
 - c. The Drawings and Specifications may not be modified unilaterally by either Manufacturer or Assignee, provided, however, the Drawings and Specifications may be duly modified in accordance with the applicable terms and conditions of the Construction Contract.
 - d. All performance warranties, guarantees, and indemnifications required by the Agreement will continue to run for the benefit of Assignor, as the Project Owner, and Assignee, as Contractor. However, should Assignor and Assignee make any warranty, guarantee or indemnification claim, then Manufacturer shall be responsible for answering to only one claim. Other than its remedies available under any warranty, guaranty, or indemnification obligation, Assignor does not retain any other rights under this Agreement, but does retain all its rights and remedies available as a party to the Construction Contract. Assignee agrees to perform the scope of work as set forth in the Drawings and Specifications, and any modification to the Drawings and Specifications shall require a written amendment. Any limitations of Manufacturer’s liability by this Agreement are binding on, and will continue to belong to Assignor even after assigning this Agreement.
 - i. After assignment, Manufacturer agrees to submit all Applications for Payment directly to Assignee as Contractor.
 - a) Assignee shall promptly review each application for payment, approve the application for payment and then submit the amount of approved application for payment with its next application for payment to Thornton in accordance with the Construction Contract’s application for payment provisions.

- b) Assignee shall pay Manufacturer within thirty (30) Calendar Days of receipt of payment from Assignor in accordance with the applicable provisions in the Construction Contract.
 - c) After assignment, Engineer is authorized to review, approve, or deny the content of an application for payment to the extent that Assignee - as Construction Contractor - will ensure the Engineer's review of an application for payment complies with the application for payment process the Construction Contract requires, which is incorporated herein by this reference.
- ii. Assignor's rights available to any pending claim are hereby granted to Assignee.
- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of such terms and conditions.
- L. **Inspection of Records.** In connection with Manufacturer's performance hereunder, Thornton and any of its duly authorized representatives shall have access to all of Manufacturer's books, documents, papers, and any other records of Manufacturer that relate to the Work. Manufacturer further agrees that such records shall contain information concerning the personnel who performed the Work, the specific Work they performed and the hours they worked. Manufacturer shall retain these records for three (3) years after the termination date of this Agreement.
- M. **Conflict of Interest.** Intentionally Omitted.
- N. **Coordination of Services.** Manufacturer shall fully coordinate its Work with other vendors, contractors, or other entities performing work, if interfaces with or is affected in any way by Manufacturer's Work and with any interested City or other governmental agencies.
- O. **Non-Discrimination.** Intentionally Omitted.
- P. **Advertising and Public Disclosures.** Intentionally Omitted.
- Q. **Time Is Of The Essence.** The Parties agree that in the performance of the terms and conditions of this Agreement by Manufacturer that time is of the essence.
- R. **Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
- S. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

- T. **Joint Venture.** If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Manufacturer, which are set forth in this Agreement.
- U. **Taxes and Licenses.** Manufacturer shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to Work which it performs under this Agreement. Manufacturer shall promptly pay, when due, all bills, debts, and obligations it incurs performing Work under this Agreement and to allow no lien, mortgage, judgment, or execution to be filed against the Equipment.
- V. **Severability.** In the event any of the provisions, or the application of any provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.
- W. **No Third Party Beneficiaries.** Except for those Assignment provisions that apply herein, the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Manufacturer and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Manufacturer that subcontractors and any other persons other than Thornton or Manufacturer receiving any benefits from this Agreement shall be deemed incidental beneficiaries only.
- X. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by any applicable City regulation, rule, and/or ordinance. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- Y. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained in this entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those, which are expressly reserved herein to the City Manager or City Manager's designee, shall be valid unless they are contained in an instrument that is executed by all the Parties with the same formality as this Agreement.
- Z. **Liquidated Damages.**
1. The Parties agree time is of the essence in the Agreement with respect to the required Milestone Dates (which may be changed or extended in accordance with the terms of the Agreement). The Parties further agree the

actual damages Thornton would incur are difficult or impossible to calculate with any certainty but an unexcused delay would cause an inconvenience, increased cost and loss of use by the public should Manufacturer fail to achieve the Milestone Dates as set forth in the table located in Section II.E.2 of this Agreement.

2. As a remedy, and not as a penalty, the Parties mutually agree that for each respective Milestone Date that Manufacturer fails to meet, Manufacturer will pay **Five Hundred Dollars (\$500)** as Liquid Damages each Calendar Day until that applicable Milestone Date is achieved, which is listed in Section II.E.2 of this Agreement.

Buyer shall have the right to offset the amounts owed as Liquidated Damages, in whole or in part against compensation owed and due to Manufacturer under this Agreement. Thornton will notify Manufacturer in writing of any Liquidated Damages claim before deducting such sums from money owed and payable to Manufacturer. In the alternative, if the Parties mutually agree, Manufacturer shall pay such Liquidated Damages (without offset or deduction of any amounts Thornton claims Manufacturer may owe) by certified or cashier's check or by wire transfer to a bank account designated by Thornton within thirty (30) days of receipt of the invoice, which Thornton may issue until the Milestone Date(s) is achieved.

3. Thornton's right to recover Liquidated Damages shall not limit its other available remedies, which Thornton may have, either at law or in equity, for any breach or failure to perform by Manufacturer under this Agreement.
4. No delay by the Thornton will be construed as a waiver of its right to assess or collect Liquidated Damages from Manufacturer. Notwithstanding the terms of this Liquidated Damages Section, should a court of competent jurisdiction find all or any provisions in this Section Z, Liquidated Damages, are invalid or unenforceable, Thornton may pursue its actual damages caused by Manufacturer's unexcused delay.

AA. **Dispute Resolution.**

1. Unless otherwise agreed in writing, Manufacturer shall continue to perform the work towards manufacturing the Equipment by the Milestone Dates during any dispute or dispute resolution proceedings. If Manufacturer continues to perform, Thornton shall continue to make payments in accordance with this Agreement. The Parties shall attempt to resolve the dispute informally between the Parties' chosen representatives.
2. If either Party claims that attempts to resolve the dispute have reached an impasse, the Parties shall refer the dispute to the City Manager or City Manager's designee(s) to reach resolution through good faith, direct discussions. The Parties agree the representatives should possess the necessary authority to resolve the dispute. If the dispute remains

unresolved thirty (30) days after informal negotiations began, the Parties shall submit the dispute to mediation, which shall be held in the City of Thornton. The Parties shall share equally in the mediator's fees.

3. If mediation is unsuccessful, the Parties may proceed to litigation. Any legal action concerning or arising out of this Agreement shall be brought in the District Court, County of Adams, State of Colorado.
4. Any action arising out of or relating to this Agreement asserted by Manufacturer against Thornton shall be brought within two (2) years from when the action accrued pursuant to C.R.S. § 13-80-102(h), as may be amended.
5. This Agreement shall be governed by the Laws of the State of Colorado notwithstanding its choice of law principles.

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This Agreement is expressly subject to and will not become effective or binding on Thornton until it is fully approved and executed by Thornton.

APPROVED AS TO LEGAL FORM:

CITY OF THORNTON, COLORADO:


Tami Yellico, City Attorney

Signed by: *Michael J. Hickman*
By: AC87F8D6F9E44C8...
Michael J. Hickman
Senior Assistant City Attorney

Signed by: *Kimberly Newhart*
81A05B023CC549E...
Kimberly Newhart
Finance Director

ATTEST:

CITY OF THORNTON, COLORADO:

Signed by:  *Kristen N. Long*
D57962BD4ECF4A2...
Kristen N. Long, City Clerk

DocuSigned by: *Sean Saddler*
31744714E1834C9...
Sean Saddler, PE
Support Services Director

ATTEST FOR FIRM SIGNATURE: (If corporation)	ENERGY MANAGEMENT CORPORATION:
Signed by: <i>Luke Lancaster</i> 5E44E2CFEB9A456...	Signed by: <i>Darren Hortin</i> BBA914108735419...
Signature	Signature
Luke Lancaster	Darren Hortin
Print Name	Print Name
VP sales	CFO
Title	Title

EXHIBIT A

TECHNICAL SPECIFICATIONS (UNDER SEPARATE COVER)

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EXHIBIT B

PROJECT PLANS (UNDER SEPARATE COVER)

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EXHIBIT C

ASSIGNMENT AGREEMENT

This assignment will commence on the date Buyer, as Assignor, and Contractor, as Assignee enter into the Construction Contract ("Effective Date").

This Agreement between Thornton and Manufacturer to manufacture the Equipment, and for the Special Services, is hereby assigned and transferred to Contractor ("Assignee") by Thornton ("Assignor"). Upon assignment by Assignor, Assignee shall assume the duties, rights, and obligations of Assignor in accordance with the terms and conditions of the Agreement, and will also be responsible to Assignor as set forth in the Construction Contract. Hereafter, Assignee and Manufacturer shall perform their respective obligations and responsibilities to each other the Agreement requires. Thornton, Manufacturer, and Contractor hereby acknowledge and agree to be bound by this assignment to the terms and conditions of this Agreement entered into by and between Thornton and Manufacturer on this __ day of ____, 2026.

The Effective Date of this Assignment Agreement is concurrent with the Construction Contract date signed by Thornton and Contractor.

Assignment made by Thornton:

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Manufacturer:

Manufacturer Name: _____

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Contractor/Assignee:

Contractor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

PURCHASE AGREEMENT

This Purchase Agreement is made and entered into on 4/22/2026, (“Effective Date”) by and between the **City of Thornton**, a Colorado home rule municipality, in the state of Colorado (hereinafter, “Buyer” or “Thornton”) and **Sonepar Mountain Holdings, LLC d/b/a QED** (hereafter, the “Distributor”). Thornton and Distributor hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

I. RECITALS

- A. Buyer desires to have Distributor manufacture certain equipment (as defined below) exclusively for Buyer using the Specifications provided by Buyer’s engineer (as identified below) relating to **Thornton Water Project – Pre-Purchase Electric, Project No. 12-777J2**; and
- B. Distributor agrees to manufacture, the Equipment for Buyer on the terms and conditions set forth in this Agreement; and
- C. Buyer will, in turn, purchase from Distributor and associated equipment, parts, and documentation from Distributor’s facility as such items are more particularly described in Exhibits A and B, which are attached (under separate cover) to and by this reference made a part of this Agreement (collectively, the “Equipment”). The Equipment shall include only those items described in Exhibit and A and B; and
- D. Buyer has retained Carollo Engineers (“Engineer”) to design the Equipment in accordance with the Technical Specifications described in Exhibit A (“Equipment Specifications”), and Plans described in Exhibit B (“Equipment Plans”); and
- E. Buyer will provide to Distributor the Equipment Specifications prepared by Engineer for the sole purpose of manufacturing the Equipment required by Buyer subject to the terms and conditions, set forth in this Agreement; and
- F. Buyer, having all the rights and legal ownership assigned by and purchased from the Engineer, hereby grants and authorizes the Distributor to fabricate, furnish and deliver the Equipment as specified in Exhibits A and B to Buyer in accordance with the terms and subject to the conditions set forth in this Agreement; and
- G. Distributor hereby agrees to manufacture and deliver to Buyer the Equipment and associated equipment, parts, and documentation identified in Exhibits A and B in accordance with the terms and subject to the conditions set forth in this Agreement.
- H. Moreover, for purposes of this Agreement, Distributor is a merchant dealing in the particular goods that are the subject of this Agreement and Buyer is a nonmerchant as defined by the Uniform Commercial Code in effect in Colorado on the date of execution of this Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS & CONDITIONS

- A. **Notice to Proceed.** Upon receipt of a written Notice to Proceed from Thornton, Distributor will begin to furnish all of the labor, supplies and materials, equipment, and any other facilities or resources required to perform and complete the work authorized by the Notice to Proceed to complete the Equipment. The Equipment will be manufactured by the Distributor in the best and most workmanlike manner by qualified, careful and efficient workers, and in conformity with the best standard manufacturing practices.
- B. **Submittal, Review, Manufacture and Acceptance of Equipment Built to Buyer's Specifications.**
1. As used in this Agreement, the term "Equipment" shall mean the equipment described in Exhibits A and B attached (under separate cover) hereto and made a part hereof to be manufactured by Distributor exclusively for Buyer in accordance with this Agreement, as may be modified and improved at the request of Buyer.
 2. The designs and drawings provided by the Engineer, which have been previously furnished by Buyer to Distributor, and receipt whereof by Distributor is hereby acknowledged. It also includes any and all improvements, changes and/or modifications to the Equipment, which the parties hereto may make upon mutual agreement during the term of this Agreement.
 3. Distributor shall manufacture in its own facilities or those of sub-contractors of its designation and remit to Buyer the Equipment, as defined in Exhibits A and B, on the basis of Buyer's Engineering specification and drawings referred to above, and incorporating such changes and improvements therein as the parties hereto mutually determine and agree upon from time-to-time. The parties agree that final assembly, final test and inspection, and packing will at all times be done by Distributor in its own facilities.
 4. Distributor shall complete and promptly furnish Buyer the Equipment no later than the prescribed dates in the table of Section II. E, below or unless by another mutually agreed upon date.
 5. The Engineer of Buyer and Distributor shall jointly confirm all specifications in sufficient detail necessary for the production of the Equipment, which specifications shall include the quality of the material used and the performance standards of the Equipment to be manufactured by Distributor. Such specifications, when completed, shall be incorporated into this Agreement as an integral part hereof, and no changes may be made to such specifications without the written consent of both Buyer and Distributor.

6. The Equipment manufactured and sold by Distributor to Buyer hereunder shall conform to the specification established in the manner described above, and shall be marked as Buyer may determine. Buyer agrees that a separate marking of manufacturer's trademark may also be made in such place and manner as the parties hereto shall determine and include in the specifications.
7. Upon the terms and subject to the conditions contained in this Agreement, by the Date (defined below), Distributor shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall receive, inspect, approve, and purchase from Distributor the Equipment. As the term is used in this Agreement and the exhibits, "Equipment" means and include copies of all of Distributor's records and files which relate to any of the Equipment and its parts, including, but not limited to, the following: (i) operations, maintenance, environmental and engineering records; (ii) facility records; (iii) accounting files and operating statements and files; (iv) any and all contracts, purchase orders or other agreements with third parties including those with its subcontractors and suppliers and (v) any other records or files in the possession of Distributor relating to the Equipment; (vi) save and except for records the disclosure of which would jeopardize any trade secrets, intellectual property information available to Distributor concerning such records, and would cause Distributor to breach its confidentiality obligation to which it is bound, or would violate any applicable law.

C. Modifications and Changes to the Equipment.

1. A change to the Equipment is any change or modification that is materially different from, or in addition to the Equipment described in Exhibits A and B (under separate cover) of this Agreement. If Distributor notifies Buyer within a reasonable time after becoming aware of any change to the Equipment that will impact Distributor's cost and/or time of performance, the Parties shall negotiate in good faith an equitable adjustment to the Purchase Price and/or schedule, as applicable, to account for such change.
2. Any change, including any increase of the Compensation, shall only be effective or paid from an authorized Purchase Order or written amendment executed by Buyer's City Manager ("City Manager") or City Manager's designee(s). If Distributor proceeds without such written authorization, then Distributor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit, or implied contract.

D. Testing and Inspection of the Equipment. Upon receipt of the Equipment Buyer shall inspect the Equipment and perform such other tests and inspections deemed appropriate by Buyer in order to assess the integrity and condition of the Equipment, provided that any and all such testing and inspections do not damage the Equipment

before acceptance. Distributor shall have the right to have a representative present for any such testing, all of such testing shall be performed in compliance with all applicable laws, and Buyer shall deliver to Distributor a copy of the results or reports prepared in connection with such testing.

E. Distributor’s Equipment Schedule Dates.

1. The Milestone dates (see table below), including the submittal of Specifications and Drawings, the delivery of Equipment, and the furnishing of Special Services as stated in this Agreement, means that time is of the essence.
2. The following schedule is the designated timeline (“Milestone Dates”) for the production of the Equipment:

Milestone(s) Dates		
First Milestone Date for Initial Submittal of Shop Drawings	28 days	From the Notice to Proceed Date
Second Milestone Date for Completion and Acceptance of Shop Drawings by Distributor	84 days	From the Notice to Proceed Date
Delivery of Equipment to Destinated Location by Distributor	580 days	From the Notice to Proceed Date
Acceptance of Equipment by Buyer or Buyer’s Engineer	7 days	From the Notice to Proceed Date
Commence Special Services for Goods, as needed	580 days	From the Notice to Proceed Date
Complete Special Services for Equipment	850 days	From the Notice to Proceed Date
Final Inspection and Final Acceptance after Delivery of Equipment and Special Services as needed	850 days	From the Notice to Proceed Date

3. Submittal of Specifications and Drawings: Buyer or the Engineer on behalf of Buyer will submit all Specifications and Drawings required by the Agreement to Distributor for review and approval.

4. Distributor's Review: Distributor will review Specifications and Drawings for approval or if not approved, return them with comments regarding what information is needed for approval no more than fourteen (14) Calendar Days after submittal of Specifications and Drawings to Distributor. If additional time is needed because the submittals were unsatisfactory, Distributor shall resubmit them within fourteen (14) Calendar Days after response from Buyer or the Engineer, or within such period of time as agreed to by the Parties. However, Resubmittals shall be limited whenever possible.

F. **Delivery.**

1. Distributor shall deliver the Equipment F.O.B. by to the designated location. Distributor shall tender of delivery of the Equipment to a common carrier acceptable to Buyer. Buyer shall pay all approved freight, insurance, packing and other transportation charges for satisfactory delivery of Equipment ("Transportation Costs"). Distributor may, but is not obligated to pay in advance such charges with Buyer's consent, and Buyer will reimburse Distributor for the Transportation Costs upon receipt of evidence of payment by Distributor.
2. In connection with the delivery of the Equipment, Buyer may designate in writing, not less than ten (10) Business Days prior to the shipment date, the carrier for shipment the amount and type of insurance coverage required.
3. If Buyer fails to designate any or all such items, Distributor, at its reasonable discretion, will decide the carrier for shipment, the amount and type of insurance coverage required to ship the Equipment. Distributor shall select, at its reasonable discretion, the type and amount of crating needed to ship the Equipment to the agreed to designated location specified by Buyer .

G. **Compensation.**

1. Equipment Purchase Price. In accordance with the milestone payment schedule in Section II.H, Buyer shall pay Distributor **one million seven hundred nineteen thousand dollars (\$1,719,000)** ["Purchase Price"] for the Equipment in accordance with this Agreement. The Purchase Price is exclusive of Transportation Costs or applicable taxes, which shall be invoiced as separate line items if applicable.
2. Special Services. The total Thornton shall pay, and Distributor will receive for furnishing any additional materials or services is **one million seven hundred nineteen thousand dollars (\$1,719,000)** based on the table below, which is subject to adjustment by a Change Order and/or written amendment as approved by Buyer.

3. Any Compensation herein is subject to adjustment but only by a written Change Order authorized by Buyer in writing in accordance with its current policies.

Unit Price Equipment and Special Services					
Item No.	Description	Unit	Qty	Unit Price	Extended Price
1	Transformer (Tag Number XFMR-SW1)	EACH	1	\$321,709.00	\$321,709.00
2	Transformer (Tag Number XFMR-PP1)	EACH	1	\$42,400.00	\$42,400.00
3	Switchgear (Tag Number SWGR-	EACH	1	\$1,022,700.00	\$1,022,700.00
4	Switchgear (Tag Number SWGR-	EACH	1	\$209,725.00	\$209,725.00
5	Switchboard (Tag Number SWBD-SW)	EACH	1	\$108,528.00	\$108,528.00
6	Lighting Panel (Tag Number LP-SW)	EACH	1	\$3810.00	\$3,810.00
7	Power Panel (Tag Number PP-SW)	EACH	1	\$10,128.00	\$10,128.00
Total					\$1,719,000.00

H. **Payment Procedures.**

1. Distributor shall submit invoices to ap.invoices@ThorntonCO.gov at the following percentages for each line item indicated below based on successful completion of each specified Milestone:

Milestone Payments	Percentage of Lump Sum
Approval of Shop Specifications and Drawings Submittals	10%
Completion of Factory Testing and Initial Approval by Buyer	5%
Delivery of materials to project site	70%
Installation of Equipment and related Equipment parts	10%
Successful testing of installed Equipment	5%
Total	100%

III. MISCELLANEOUS TERMS

A. **Title and Risk of Loss.**

1. The risk of loss from any casualty to the Equipment and its related parts from any cause shall be on Distributor until delivery to the designated location and Buyer's final approval.
2. Title to and risk of loss, damage and destruction of the Equipment shall transfer from Distributor after delivery to the designated location and Buyer's final approval.

B. **Distributor's Warranties**

1. Distributor warrants to Buyer that, for a period of twenty-four (24) months after delivery, the Equipment will conform in all material respects to the Technical Specifications and Project Plans respectively, attached (under separate cover) hereto as Exhibits A and B and will be free from defects in materials and workmanship. Distributor's obligation under this warranty is limited to, at Distributor's option, repairing or replacing, at Distributor's option, at Distributor's facility or at the location of the Equipment, any Equipment or parts thereof that Distributor determines not to conform to this warranty.
2. Buyer shall promptly notify Distributor in writing of any alleged defects in the Equipment and specifically describe what is the alleged defect(s). Distributor shall have no obligations under this warranty with respect to any defect unless it receives notice and a description of the alleged defect(s) no later than thirty (30) Calendar Days following the expiration of the warranty period.
3. Upon receipt of a notice of the alleged defect(s), Distributor shall perform the warranty service at the location of the Equipment or shall instruct Buyer as to the part or parts of the Equipment that Buyer shall ship and return to Distributor for repair or replacement. Distributor will pay all costs to ship the repaired or replaced Equipment back to Buyer and will reimburse Buyer its costs to ship and transport Equipment to Distributor when Distributor determines the cause of the defective; otherwise, if the defect is not the fault of Distributor, Buyer shall be responsible for paying all the costs of shipping and transportation.
4. Distributor represents and warrants that it has title to the Equipment and all its parts to be conveyed hereunder and has the right to sell the same and at the time of delivery, the Equipment shall be free of any security interest all liens and encumbrances whatsoever.

5. Notwithstanding anything to the contrary herein, Buyer's exclusive remedies for breach of warranty are: (i) repair or replacement of Equipment or re-performance of services at no cost to Buyer; or (ii) if mutually agreed by Buyer and Distributor, credit for the price paid.

C. **Infringement Indemnification.** To the fullest extent permitted by law, Distributor will defend, indemnify, and hold harmless Thornton, its officers, agents and employees, at its own expense, any suit or proceeding against Buyer for the direct infringement of United States patents and trademarks of the Equipment purchased from Distributor hereunder. Distributor shall pay all damages and costs finally awarded against Buyer because of the infringement caused by Distributor; provided, however, Distributor shall not be obligated to defend or be liable for costs or damages awarded in any suit or proceeding for infringement of patents by any other products, or any completed equipment, system, assembly, combination, method or process, in which, or in the manufacture or testing of which, any Equipment purchased from Distributor that may be or has been used; and provided further Distributor's obligations to pay such damages and costs shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged Infringement and Buyer continues to use it, unless Distributor gives to Buyer written consent to continue using the alleged infringing Equipment or Equipment part. Other than for the legal obligation to defend Buyer against a third party infringement claim, Distributor's liability hereunder shall not exceed the purchase price paid by Buyer for the infringing Equipment, and Distributor shall not be liable for any collateral, incidental or consequential damages awarded against Buyer caused Buyer's negligence. Besides this obligation, Buyer may seek any and all other legal remedies available to Buyer and this obligation shall not be considered its exclusive remedy.

D. **Insurance.** Distributor shall procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:

1. **Workers' Compensation Insurance.** Workers' compensation insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Evidence of qualified self-insured status may be substituted.

2.	<u>Commercial General Liability Insurance</u>	(LIMITS)
a.	Each Occurrence	\$4,000,000
b.	Products/Completed Operations Aggregate	\$4,000,000
c.	Personal and Advertising Injury	\$4,000,000
d.	General Aggregate	\$10,000,000

The limits required hereunder may be satisfied by a combination of primary and excess/umbrella coverage. The policy(ies) shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or

modified in any way by Distributor; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, liability resulting from explosion, collapse, or underground exposures. The coverage shall not exclude faulty workmanship as a covered occurrence.

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

3. Automobile Liability Insurance. Automobile liability insurance with combined single limits for bodily injury and property damage of one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Distributor's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.
4. Additional Insured. Distributor shall add Buyer, its officers and employees as additional insureds with respect to the Commercial General Liability, Auto Liability and, if required, Builder's Risk and Installation Floater coverages above.
5. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded along with the Additional Insured Endorsement to Buyer by Distributor's Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and limits are in full force and effect and shall be subject to review and approval by Buyer **prior to commencement of any Work under this Agreement**. The initial completed Certificate of Insurance and Additional Insured Endorsement shall be sent to:

City of Thornton
Patrick Hinterberger, Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton's Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date. Indicate "Renewal COI" in the email subject line. Buyer reserves the right to request and receive a certified copy of any policy endorsement required hereunder. Distributor agrees to execute any and all documents necessary to allow Buyer access to any and all such insurance policy endorsements pertaining to this particular Project.

6. Failure to Insure. Failure on the part of Distributor or subcontractor to procure or maintain policies providing the required coverages, conditions, and limits shall constitute a material breach of Agreement upon which Buyer may immediately terminate this Agreement, or at its discretion, Buyer may procure, or renew any such policy, or any extended reporting period thereto, and may pay any and all premiums if required, and all monies so paid by Buyer shall be repaid by Distributor to Buyer upon demand, or Buyer may offset the cost of the premiums against any monies due to Distributor from Buyer.

7. Other Insurance Requirements.
 - a. Distributor shall cause any onsite Subcontractor to procure and maintain adequate levels of insurance coverage for Workers' Compensation, Commercial General Liability, Automobile Liability, and other coverages Distributor may require. For Commercial General Liability and Automobile Liability insurance of any such subcontractor, Buyer will be named as an additional insured. Distributor shall prepare a schedule of required coverages for each of its onsite Subcontractors and shall submit such schedule to Buyer prior to any Subcontractor commencing any Work on a Task Assignment under this Agreement. Such coverages for any Subcontractors shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Distributor.
 - b. Distributor shall procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all insurable liability, claims, demands, and other obligations assumed by Distributor pursuant to this clause. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - c. Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Buyer and Distributor against other insurable hazards relating to the Work to be done.
 - d. Every policy required above shall be primary insurance and any insurance carried by Buyer, its officers, or its employees shall be excess and not contributory insurance to that provided by Distributor. Distributor shall be solely responsible for any deductible losses under the policies required above.

- e. Distributor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- f. All policies shall include a provision that the coverages afforded under the policies shall not be canceled, terminated, or materially changed prior to the natural termination date until at least thirty (30) Calendar Days prior written notice has been sent to Buyer. The Certificate(s) shall indicate the form used, if any, under which this provision is included.
- g. Waiver of Subrogation. All insurance policies required of Distributor shall include a waiver of any right of subrogation written in favor of the Parties.

E. **Governmental Immunity.** The Parties hereto understand and agree that Buyer, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to Thornton, its agents, officers, or employees.

F. **Independent Contractor.**

- 1. It is understood and agreed by and between the Parties that the status of Distributor shall be that of an independent contractor and is only retained on a contractual basis to perform the services for limited periods of time and it is not intended, nor shall it be construed, that Distributor or its employees or subcontractors under Chapter VII of the City Charter, or Chapter 54 of the City Code, are considered employed by Thornton for any purpose whatsoever.
- 2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Distributor nor** any employee, agent or sub-contractor of Distributor **is not entitled to unemployment insurance benefits from the City of Thornton and the only unemployment compensation coverage shall be provided by Distributor or some other entity besides Thornton, that Distributor is not entitled to Workers' Compensation benefits from Thornton and that Distributor is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph must be consistent with Distributor's insurance obligations that are set forth in this Agreement.

G. **Grounds for Termination.** Thornton may issue a written Notice of Intent to Terminate for the reasons that follow:

1. **Termination for Convenience.** In the event this Agreement is terminated for convenience, the Parties shall agree on an equitable payment for satisfactory performance prior to termination, but the sum of such payment and Buyer's payments to Distributor hereunder prior to such termination shall not be: (i) be less the documented costs incurred by Distributor (including manufacturer cancellation fees) due to such termination; or (ii) greater than the Purchase Price.
2. **Termination for Cause\Default.** If Distributor has substantially or materially breached the terms of this Agreement, or Thornton declares Distributor is in "Default," shall be cause to terminate this Agreement and Thornton may seek to exercise all available legal and/or equitable remedies.
3. **Termination for Non-Appropriations.** In the event that the Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may, at the beginning of the fiscal year for which the City Council does not appropriate such funds and upon prior written notice as provided for, may terminate this Agreement without penalty and be released of further obligations.

H. **Venue / Law / Statute of Limitations.** This Agreement shall be governed by the laws of the State of Colorado, notwithstanding its choice of law principles. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to the Agreement or the Services asserted by Distributor against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).

I. **Notice.** Any notice or communication between Distributor and Thornton which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class, United States mail, addressed as follows:

THORNTON: City of Thornton
Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

DISTRIBUTOR: Sonepar Mountain Holdings, LLC
Attention: Vice President, Finance
1661 West 3rd Avenue
Denver, CO 80223

With a copy to:

Sonepar Mountain Holdings, LLC
c/o Sonepar USA
Attn: Legal Department
4400 Leeds Avenue, Suite 500
N. Charleston, SC 29405

J. **Assignment.**

1. Thornton has the right to assign this Agreement and the furnished Equipment and Special Services, but only to a person or entity with sufficient and ability to satisfactorily perform and assume all of Thornton's rights, duties and obligations this Agreement requires, and Distributor hereby consents to such assignment.

The Assignment Agreement, which is attached hereto as Exhibit C – Assignment Agreement, must be signed by Thornton, Distributor and Contractor.

2. Upon assignment by Buyer, the following provisions shall apply:
 - a. After this Agreement is signed by Buyer ("Assignor"), it will be assigned to the construction contractor ("Assignee") designated by Thornton. The assignment will be effective on the date the construction contract between Thornton and Contractor is signed, which is supposed to occur in or around the second quarter of 2026. On the effective date of assignment, all references in this Agreement to "Buyer" or "Thornton" shall be replaced with Assignee's name.
 - b. Upon the assignment of this Agreement, Assignor shall be relieved of all its rights, duties, and obligations set forth in this Agreement, other than those exceptions made therein. Thereafter, Distributor shall become the supplier of Assignee, and all rights, duties, and obligations of Assignor shall inure to, and become the rights, duties, and obligations of Assignee as set forth in this Agreement.
3. After assignment:
 - a. The Drawings and Specifications, and any modifying Addenda will by this reference become the "Contract Documents" in the Construction Contract.
 - b. Should the Drawings and/or Specifications need to be modified, then Distributor and Assignee shall enter into and execute a Change Order in accordance with this Agreement.

- c. The Drawings and Specifications may not be modified unilaterally by either Distributor or Assignee, provided, however, the Drawings and Specifications may be duly modified in accordance with the applicable terms and conditions of the Construction Contract.
- d. All performance warranties, guarantees, and indemnifications required by the Agreement will continue to run for the benefit of Assignor, as the Project Owner, and Assignee, as Contractor. However, should Assignor and Assignee make any warranty, guarantee or indemnification claim, then Distributor shall be responsible for answering to only one claim. Other than its remedies available under any warranty, guaranty, or indemnification obligation, Assignor does not retain any other rights under this Agreement, but does retain all its rights and remedies available as a party to the Construction Contract. Assignee agrees to perform the scope of work as set forth in the Drawings and Specifications, and any modification to the Drawings and Specifications shall require a written amendment. Any limitations of Distributor's liability by this Agreement are binding on, and will continue to belong to Assignor even after assigning this Agreement.
 - i. After assignment, Distributor agrees to submit all Applications for Payment directly to Assignee as Contractor.
 - a) Assignee shall promptly review each application for payment, approve the application for payment and then submit the amount of approved application for payment with its next application for payment to Thornton in accordance with the Construction Contract's application for payment provisions.
 - b) Assignee shall pay Distributor within thirty (30) Calendar Days of receipt of payment from Assignor in accordance with the applicable provisions in the Construction Contract.
 - c) After assignment, Engineer is authorized to review, approve, or deny the content of an application for payment to the extent that Assignee - as Construction Contractor - will ensure the Engineer's review of an application for payment complies with the application for payment process the Construction Contract requires, which is incorporated herein by this reference.
 - ii. Assignor's rights available to any pending claim are hereby granted to Assignee.

- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of such terms and conditions.
- L. **Inspection of Records.** In connection with Distributor's performance hereunder, Thornton and any of its duly authorized representatives shall have access to all of Distributor's books, documents, papers, and any other records of Distributor that relate to the Work. Distributor further agrees that such records shall contain information concerning the personnel who performed the Work, the specific Work they performed and the hours they worked. Distributor shall retain these records for three (3) years after the termination date of this Agreement.
- M. **Conflict of Interest.** Intentionally Omitted.
- N. **Coordination of Services.** Distributor shall fully coordinate its Work with other Vendors, contractors, or other entities performing work, which interfaces with or is affected in any way by Distributor's Work and with any interested City or other governmental agencies.
- O. **Non-Discrimination.** Intentionally Omitted.
- P. **Advertising and Public Disclosures.** Intentionally Omitted.
- Q. **Time Is Of The Essence.** The Parties agree that in the performance of the terms and conditions of this Agreement by Distributor that time is of the essence.
- R. **Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
- S. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- T. **Joint Venture.** If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Distributor, which are set forth in this Agreement.
- U. **Taxes and Licenses.** Distributor shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to Work which it performs under this Agreement. Distributor shall promptly pay, when due, all bills, debts, and obligations it incurs performing Work under this Agreement and to allow no lien, mortgage, judgment, or execution to be filed against the Equipment.
- V. **Severability.** In the event any of the provisions, or the application of any provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

- W. **No Third Party Beneficiaries.** Except for those Assignment provisions that apply herein, the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Distributor and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Distributor that subcontractors and any other persons other than Thornton or Distributor receiving any benefits from this Agreement shall be deemed incidental beneficiaries only.
- X. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by any applicable City regulation, rule, and/or ordinance. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- Y. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained in this entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those, which are expressly reserved herein to the City Manager or City Manager's designee, shall be valid unless they are contained in an instrument that is executed by all the Parties with the same formality as this Agreement.
- Z. **Liquidated Damages.**
1. The Parties agree time is of the essence in the Agreement with respect to the required Milestone Dates (which may be changed or extended in accordance with the terms of the Agreement). The Parties further agree the actual damages Thornton would incur are difficult or impossible to calculate with any certainty but an unexcused delay would cause an inconvenience, increased cost and loss of use by the public should Distributor fail to achieve the Milestone Dates as set forth in the table located in Section II.E.2 of this Agreement.
 2. As a remedy, and not as a penalty, the Parties mutually agree that for each respective Milestone Date that Distributor fails to meet, , Distributor will pay **One Thousand Dollars (\$1000)** as Liquid Damages each Calendar Day until that applicable Milestone Date is achieved, which is listed in Section II.E.2 of this Agreement.

Buyer shall have the right to offset the amounts owed as Liquidated Damages, in whole or in part against compensation owed and due to Distributor under this Agreement. Thornton will notify Distributor in writing of any Liquidated Damages claim before deducting such sums from money owed and payable to Distributor. In the alternative, if the Parties mutually agree, Distributor shall pay such Liquidated Damages (without offset or deduction of any amounts Thornton claims Distributor may owe) by certified or cashier's check or by wire transfer to a bank account designated by Thornton within thirty (30) days of receipt of the invoice, which Thornton may issue until the Milestone Date(s) is achieved.

3. Thornton's right to recover Liquidated Damages shall not limit its other available remedies, which Thornton may have, either at law or in equity, for any breach or failure to perform by Distributor under this Agreement.
4. No delay by the Thornton will be construed as a waiver of its right to assess or collect Liquidated Damages from Distributor. Notwithstanding the terms of this Liquidated Damages Section, should a court of competent jurisdiction find all or any provisions in this Section Z, Liquidated Damages, are invalid or unenforceable, Thornton may pursue its actual damages caused by Distributor's unexcused delay.

AA. **Dispute Resolution.**

1. Unless otherwise agreed in writing, Distributor shall continue to perform the work towards manufacturing the Equipment by the Milestone Dates during any dispute or dispute resolution proceedings. If Distributor continues to perform, Thornton shall continue to make payments in accordance with this Agreement. The Parties shall attempt to resolve the dispute informally between the Parties' chosen representatives.
2. If either Party claims that attempts to resolve the dispute has reached an impasse, the Parties shall refer the dispute to the City Manager or City Manager's designee(s) to reach resolution through good faith direct discussions. The Parties agree the representatives should possess the necessary authority to resolve the dispute. If the dispute remains unresolved thirty (30) days after informal negotiations began, the Parties shall submit the dispute to mediation, which shall be held in the City of Thornton. The Parties shall share equally in the mediator's fees.
3. If mediation is unsuccessful, the Parties may proceed to litigation. Any legal action concerning or arising out of this Agreement shall be brought in the District Court, County of Adams, State of Colorado.

4. Any action arising out of or relating to this Agreement asserted by Distributor against Thornton shall be brought within two (2) years from when the action accrued pursuant to C.R.S. § 13-80-102(h), as may be amended.
5. This Agreement shall be governed by the Laws of the State of Colorado notwithstanding its choice of law principles.

This Agreement is expressly subject to and will not become effective or binding on Thornton until it is fully approved and executed by Thornton.

APPROVED AS TO LEGAL FORM:
Tami Yellico, City Attorney

CITY OF THORNTON, COLORADO:


Signed by:
Michael J. Hickman
By: _____
AC87F8D6F0E44C8...
Michael J. Hickman, Senior Assistant
Senior Assistant City Attorney

Signed by:
Kimberly Newhart

81A05B023CC549F...
Kimberly Newhart
Finance Director

ATTEST:

CITY OF THORNTON, COLORADO:

Signed by:
 *Kristen N. Long*

D67062BD4ECE4A2...
Kristen N. Long, City Clerk

DocuSigned by:
Sean Saddler

31744744E4834C9...
Sean Saddler, PE
Interim Executive Director of
Management Services

<p>ATTEST FOR FIRM SIGNATURE: (If corporation)</p> <p>Signed by: <i>Jason Baltazar</i> _____ 22054780FA1E435... Signature</p> <p><u>Jason Baltazar</u> Print Name</p> <p>SR, ACCOUNT MANAGER _____ Title</p>	<p>SONEPAR MOUNTAIN HOLDINGS LLC D/B/A QED:</p> <p>Signed by: <i>David Freeman</i> _____ 46FF4F47C6FB46D... Signature</p> <p><u>Brett Romke</u> Print Name</p> <p>VP Sales _____ Title</p>
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EXHIBIT A
TECHNICAL SPECIFICATIONS
(UNDER COVER)

TITLED: SOURCE WATER PUMP STATION
TECHNICAL SPECIFICATIONS PROCUREMENT PACKAGE 2

ISSUED FOR BID

VOLUME 1 OF 1

DIVISIONS 01-26

NOVEMBER 2025

PREPARED BY CAROLLO ENGINEERS

EXHIBIT B
PROJECT PLANS
(UNDER COVER)

TITLED: SOURCE WATER PUMP STATION

AGENCY REVIEW

OCTOBER 2025

PROJECDT #12-777XP

PREPARED BY CAROLLO ENGINEERS

EXHIBIT C

ASSIGNMENT AGREEMENT

Thornton Water Project – Pre-Purchase Electric, Project No. 12-777J2

This assignment will commence on the date Buyer, as Assignor, and Contractor, as Assignee enter into the Construction Contract (“Effective Date”).

This Agreement between Thornton and Distributor to manufacture the Equipment, and for the Special Services, is hereby assigned and transferred to Contractor (“Assignee”) by Thornton (“Assignor”). Upon assignment by Assignor, Assignee shall assume the duties, rights, and obligations of Assignor in accordance with the terms and conditions of the Agreement, and will also be responsible to Assignor as set forth in the Construction Contract. Hereafter, Assignee and Distributor shall perform their respective obligations and responsibilities to each other the Agreement requires. Thornton, Distributor, and Contractor hereby acknowledge and agree to be bound by this assignment to the terms and conditions of this Agreement entered into by and between Thornton and Distributor on this ___ day of _____, 2026.

The Effective Date of this Assignment Agreement is concurrent with the Construction Contract date signed by Thornton and Contractor.

Assignment made by Thornton:

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Distributor:

Vendor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Contractor/Assignee:

Contractor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

PURCHASE AGREEMENT

3/23/2026

This Purchase Agreement is made and entered into on _____, (“Effective Date”) by and between the **City of Thornton**, a Colorado home rule municipality, in the state of Colorado (hereinafter, “Buyer” or “Thornton”) and **Flowserve US Company** (hereafter, the “Manufacturer”). Thornton and Manufacturer hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

I. RECITALS

- A. Buyer desires to have Manufacturer manufacture certain equipment (as defined below) exclusively for Buyer using the Specifications provided by Buyer’s engineer (as identified below) relating to **Thornton Water Project – Pre-Purchase Pumps, Project No. 12-777J3**; and
- B. Manufacturer agrees to manufacture the Equipment for Buyer on the terms and conditions set forth in this Agreement; and
- C. Buyer will, in turn, purchase from Manufacturer and associated equipment, parts, and documentation from Manufacturer’s facility as such items are more particularly described in Exhibits A and B, which are attached (under separate cover) to and by this reference made a part of this Agreement (collectively, the “Equipment”). The Equipment shall include only those items described in Exhibit and A and B; and
- D. Buyer has retained Carollo Engineers (“Engineer”) to design the Equipment in accordance with the Technical Specifications described in Exhibit A (“Equipment Specifications”), and Plans described in Exhibit B (“Equipment Plans”); and
- E. Buyer will provide to Manufacturer the Equipment Specifications prepared by Engineer for the sole purpose of manufacturing the Equipment required by Buyer subject to the terms and conditions, set forth in this Agreement; and
- F. Buyer, having all the rights and legal ownership assigned by and purchased from the Engineer, hereby grants and authorizes the Manufacturer to fabricate, furnish and deliver the Equipment as specified in Exhibits A and B to Buyer in accordance with the terms and subject to the conditions set forth in this Agreement; and
- G. Manufacturer hereby agrees to manufacture and deliver to Buyer the Equipment and associated equipment, parts, and documentation identified in Exhibits A and B in accordance with the terms and subject to the conditions set forth in this Agreement.
- H. Moreover, for purposes of this Agreement, Manufacturer is a merchant dealing in the particular goods that are the subject of this Agreement and Buyer is a nonmerchant as defined by the Uniform Commercial Code in effect in Colorado on the date of execution of this Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS & CONDITIONS

- A. **Notice to Proceed.** Upon receipt of a written Notice to Proceed from Thornton, Manufacturer will begin to furnish all of the labor, supplies and materials, equipment, and any other facilities or resources required to perform and complete the work authorized by the Notice to Proceed to complete the Equipment. The Equipment will be manufactured by the Manufacturer in the best and most workmanlike manner by qualified, careful and efficient workers, and in conformity with the best standard manufacturing practices.
- B. **Submittal, Review, Manufacture and Acceptance of Equipment Built to Buyer's Specifications.**
1. As used in this Agreement, the term "Equipment" shall mean the equipment described in Exhibits A and B attached (under separate cover) hereto and made a part hereof to be manufactured by Manufacturer exclusively for Buyer in accordance with this Agreement, as may be modified and improved at the request of Buyer.
 2. The designs and drawings provided by the Engineer, which have been previously furnished by Buyer to Manufacturer, and receipt whereof by Manufacturer is hereby acknowledged. It also includes any and all improvements, changes and/or modifications to the Equipment, which the parties hereto may make upon mutual agreement during the term of this Agreement.
 3. Manufacturer shall manufacture in its own facilities or those of sub-contractors of its designation and remit to Buyer the Equipment, as defined in Exhibits A and B, on the basis of Buyer's Engineering specification and drawings referred to above, and incorporating such changes and improvements therein as the parties hereto mutually determine and agree upon from time-to-time. The parties agree that final assembly, final test and inspection, and packing will at all times be done by Manufacturer in its own facilities.
 4. Manufacturer shall complete and promptly furnish Buyer the Equipment no later than [the prescribed dates in the table of Section II. E, below or unless by another mutually agreed upon date.
 5. The Engineer of Buyer and Manufacturer shall jointly confirm all specifications in sufficient detail necessary for the production of the Equipment, which specifications shall include the quality of the material used and the performance standards of the Equipment to be manufactured by Manufacturer. Such specifications, when completed, shall be incorporated into this Agreement as an integral part hereof, and no changes may be made to such specifications without the written consent of both Buyer and Manufacturer.

6. The Equipment manufactured and sold by Manufacturer to Buyer hereunder shall conform to the specification established in the manner described above, and shall be marked as Buyer may determine. Buyer agrees that a separate marking of Manufacturer's trademark may also be made in such place and manner as the parties hereto shall determine and include in the specifications.
7. Upon the terms and subject to the conditions contained in this Agreement, by the Date (defined below), Manufacturer shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall receive, inspect, approve, and purchase from Manufacturer the Equipment. As the term is used in this Agreement and the exhibits, "Equipment" means and include copies of all of Manufacturer's records and files which relate to any of the Equipment and its parts, including, but not limited to, the following: (i) operations, maintenance, environmental and engineering records; (ii) facility records; (iii) accounting files and operating statements and files; (iv) any and all contracts, purchase orders or other agreements with third parties including those with its subcontractors and suppliers and (v) any other records or files in the possession of Manufacturer relating to the Equipment; (vi) save and except for records the disclosure of which would jeopardize any trade secrets, intellectual property information available to Manufacturer concerning such records, and would cause Manufacturer to breach its confidentiality obligation to which it is bound, or would violate any applicable law.

C. **Modifications and Changes to the Equipment.**

1. A change to the Equipment is any change or modification that is materially different from, or in addition to the Equipment described in Exhibits A and B (under separate cover) of this Agreement.
2. Any change, including any increase of the Compensation, shall only be effective or paid from an authorized Purchase Order or written amendment executed by Buyer's City Manager ("City Manager") or City Manager's designee(s). If Manufacturer proceeds without such written authorization, then Manufacturer shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit, or implied contract.

- D. **Testing and Inspection of the Equipment.** Upon receipt of the Equipment Buyer shall inspect the Equipment and perform such other tests and inspections deemed appropriate by Buyer in order to assess the integrity and condition of the Equipment, provided that any and all such testing and inspections do not damage the Equipment before acceptance. Manufacturer shall have the right to have a representative present for any such testing, all of such testing shall be performed in compliance with all applicable laws, and Buyer shall deliver to Manufacturer a copy of the results or reports prepared in connection with such testing. This testing

shall be with respect to equipment’s condition upon arrival to site and to justify no issues occurring during transit/transportation to site. Acceptance of the equipment mechanically shall happen basis factory testing within Manufacturer’s test facility.

Testing and Inspection of Equipment’s condition shall be done after its arrival to the designated location to ensure no issues arose during the shipping of the Equipment. Inspection of the Equipment for initial acceptance to ensure it satisfies the Technical Specifications shall be performed at Manufacturer’s facility.

E. Manufacturer’s Equipment Schedule Dates.

1. The Milestone dates (see table below), including the submittal of Specifications and Drawings, the delivery of Equipment, and the furnishing of Special Services as stated in this Agreement, means that time is of the essence.
2. The following schedule is the designated timeline (“Milestone Dates”) for the production of the Equipment:

Milestone(s)	Date (# of Days)	Notes
Initial Submittal of Shop Drawings	70 days	From Notice to Proceed
Completion and Acceptance of Shop Drawings	98 days	From Notice to Proceed
Delivery of Equipment to Destinated Location	448 days	From Notice to Proceed
Acceptance by Buyer	7 days	From Delivery
Commence Special Services for Goods, as needed	448 days	From Notice to Proceed
Complete Special Services for Equipment	448 days	From Notice to Proceed
Final Inspection and Acceptance after Delivery of Equipment and Special Services as needed	448 days	From Notice to Proceed

3. Submittal of Specifications and Drawings: Buyer or the Engineer on behalf of Buyer will submit all Specifications and Drawings required by the Agreement to Manufacturer for review and approval.

4. Manufacturer's Review: Manufacturer will review Specifications and Drawings for approval or if not approved, return them with comments regarding what information is needed for approval no more than seventy (70) Calendar Days after submittal of Specifications and Drawings to Manufacturer. If additional time is needed because the submittals were unsatisfactory, Manufacturer shall resubmit them within fourteen (14) Calendar Days after response from Buyer or the Engineer, or within such period of time as agreed to by the Parties. However, Resubmittals shall be limited whenever possible.

F. Delivery.

1. Manufacturer shall deliver the Equipment F.O.B. by to the designated location. Manufacturer shall tender of delivery of the Equipment to a common carrier acceptable to Buyer. Buyer shall pay all approved freight, insurance, packing and other transportation charges for satisfactory delivery of Equipment ("Transportation Costs"). Manufacturer may, but is not obligated to pay in advance such charges with Buyer's consent, and Buyer will reimburse Manufacturer for the Transportation Costs upon receipt of evidence of payment by Manufacturer.
2. In connection with the delivery of the Equipment, Buyer may designate in writing, not less than ten (10) Business Days prior to the shipment date, the carrier for shipment the amount and type of insurance coverage required.
3. If Buyer fails to designate any or all such items, Manufacturer, at its reasonable discretion, will decide the carrier for shipment, the amount and type of insurance coverage required to ship the Equipment. Manufacturer shall select, at its reasonable discretion, the type and amount of crating needed to ship the Equipment to the agreed to designated location specified by Buyer .

G. Compensation.

1. Equipment Purchase Price. After Final Acceptance by Buyer, Buyer shall pay Manufacturer **two million eight hundred fifty-one thousand eight hundred and 00/100 dollars (\$2,851,800.00)** ("Purchase Price") for the Equipment in accordance with this Agreement.
2. Special Services. The total Thornton shall pay, and Manufacturer will receive for furnishing any additional materials or services is **two million eight hundred fifty-one thousand eight hundred and 00/100 dollars (\$2,851,800.00)** based on the table below, which is subject to adjustment by a Change Order and/or written amendment as approved by Buyer.
3. Any Compensation herein is subject to adjustment but only by a written Change Order authorized by Buyer in writing in accordance with its current policies.

Unit Price Equipment and Special Services					
Item No.	Description	Unit	Quantity	Unit Price	Extended Price
1	3,000 HP Pumps and Motors (Tag Numbers PMP-305, PMP-306)	EACH	2	\$851,205.00	\$1,702,410.00
2	600 HP Pumps and Motors (Tag Numbers PMP-302, PMP-303)	EACH	2	\$574,695.00	\$1,149,390.00
Total					\$2,851,800.00

H. Payment Procedures.

1. Manufacturer shall submit invoices to ap.invoices@ThorntonCO.gov at the following percentages for each line item indicated below based on successful completion of each specified Milestone:

Milestone	Percentage of Lump Sum
Approval of Shop Specifications and Drawings Submittals	20%
Receipt of Major Materials	20%
Delivery of materials to project site	50%
Installation of Equipment and related Equipment parts	10%
Total	100%

III. MISCELLANEOUS TERMS

A. Title and Risk of Loss.

1. The risk of loss from any casualty to the Equipment and it related parts from any cause shall be on Manufacturer until delivery to the designated location and Buyer’s final approval, or until insurance coverage for the full value of the goods against loss from any cause during transportation is procured in favor of Buyer by either party from Manufacturer’s insurance company or any other insurer acceptable to Buyer.
2. Title to and risk of loss, damage and destruction of the Equipment shall transfer from Manufacturer after delivery to the designated location and Buyer’s final approval..

B. Manufacturer's Warranties

1. Manufacturer warrants to Buyer that, for a period of twelve (12) months from the initial Equipment startup or until eighteen (18) months after shipment, whichever occurs first. The Equipment will conform in all material respects to the Technical Specifications and Project Plans respectively, attached (under separate cover) hereto as Exhibits A and B and will be free from defects in materials and workmanship. Manufacturer's obligation under this warranty is limited to, at Manufacturer's option, repairing or replacing, at Manufacturer's option, at Manufacturer's facility or at the location of the Equipment, any Equipment or parts thereof that Manufacturer determines not to conform to this warranty.
2. Buyer shall promptly notify Manufacturer in writing of any alleged defects in the Equipment and specifically describe what is the alleged defect(s). Manufacturer shall have no obligations under this warranty with respect to any defect unless it receives notice and a description of the alleged defect(s) no later than thirty (30) Calendar Days following the expiration of the warranty period.
3. Upon receipt of a notice of the alleged defect(s), Manufacturer shall perform the warranty service at the location of the Equipment or shall instruct Buyer as to the part or parts of the Equipment that Buyer shall ship and return to Manufacturer for repair or replacement. Manufacturer will pay all costs to pack and ship the repaired or replaced Equipment back to Buyer and will reimburse Buyer its costs to ship and transport Equipment to Manufacturer when Manufacturer determines the cause of the defective; otherwise, if it the defect is not the fault of Manufacturer, Buyer shall be responsible for paying all the costs of shipping and transportation.
4. Manufacturer represents and warrants that it has title to the Equipment and all its parts to be conveyed hereunder and has the right to sell the same and at the time of delivery, the Equipment shall be free of any security interest all liens and encumbrances whatsoever.
5. After initial acceptance of Equipment by Buyer, and when the warranty period begins, all or any part of Equipment shall be warranted for the entire warranty period. This warranty does not extend to: a) Improper installation, operation or maintenance of the Equipment; b) the normal wear and tear, or of erosion, or corrosion due to improper operation; or, c) any repair or alteration performed without Manufacturer's written consent in advance. All removal and reinstallation of the Equipment, including removal of materials or structures or supply of any equipment, necessary to provide free and clear access to the Equipment, shall be performed by Buyer at its expense. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY OR OTHERWISE.

C. **Infringement Indemnification.** To the fullest extent permitted by law, Manufacturer will defend, indemnify, and hold harmless Thornton, its officers, agents and employees, at its own expense, any suit or proceeding against Buyer for the direct infringement of United States patents and trademarks of the Equipment purchased from Manufacturer hereunder. Manufacturer shall pay all damages and costs finally awarded against Buyer because of the infringement caused by Manufacturer; provided, however, Manufacturer shall not be obligated to defend or be liable for costs or damages awarded in any suit or proceeding for infringement of patents by any other products, or any completed equipment, system, assembly, combination, method or process, in which, or in the manufacture or testing of which, any Equipment purchased from Manufacturer that may be or has been used; and provided further Manufacturer's obligations to pay such damages and costs shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged Infringement and Buyer continues to use it, unless Manufacturer gives to Buyer written consent to continue using the alleged infringing Equipment or Equipment part. Other than for the legal obligation to defend Buyer against a third party infringement claim, Manufacturer's liability hereunder shall not exceed the purchase price paid by Buyer for the infringing Equipment, and Manufacturer shall not be liable for any collateral, incidental or consequential damages awarded against Buyer caused Buyer's negligence. Besides this obligation, Buyer may seek any and all other legal remedies available to Buyer and this obligation shall not be considered its exclusive remedy.

D. **Insurance.** Manufacturer shall procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:

1. **Workers' Compensation Insurance.** Workers' compensation insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Evidence of qualified self-insured status may be substituted.

Commercial General Liability Insurance (LIMITS)

a.	Each Occurrence	\$2,000,000
b.	Products/Completed Operations Aggregate	\$4,000,000
c.	Personal and Advertising Injury	\$2,000,000
d.	General Aggregate	\$10,000,000

The policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Vendor; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, liability resulting from explosion, collapse, or underground exposures. The coverage shall not exclude faulty workmanship as a covered occurrence.

2. Automobile Liability Insurance. Automobile liability insurance with combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of Manufacturer's operation, maintenance, use, loading or unloading of any auto including owned, non-owned, and hired.
3. Additional Insured. Manufacturer shall include Buyer, its officers, agents, and employees as additional insureds to the extent of Vendor's indemnity obligations with respect to the Commercial General Liability, and Auto Liability.
4. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded along with the Additional Insured Endorsement to Buyer by Manufacturer as evidence that policies providing the required coverages, conditions, and limits are in full force and effect and shall be subject to review and approval by Buyer **prior to commencement of any Work under this Agreement.** The initial completed Certificate of Insurance and Additional Insured Endorsement shall be sent to:

City of Thornton
Patrick Hinterberger, Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton's Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date. Indicate "Renewal COI" in the email subject line. Buyer reserves the right to request and receive a copy of any endorsement thereto. Manufacturer agrees to execute any and all documents necessary to allow Buyer access to any endorsements pertaining to this particular Project.

5. Failure to Insure. Failure on the part of Manufacturer or subcontractor to procure or maintain policies providing the required coverages, conditions, and limits shall constitute a material breach of Agreement upon which Buyer may immediately terminate this Agreement, or at its discretion, Buyer may procure, or renew any such policy, or any extended reporting period thereto, and may pay any and all premiums if required, and all monies so paid by Buyer shall be repaid by Manufacturer to Buyer upon demand, or Buyer may offset the cost of the premiums against any monies due to Manufacturer from Buyer.
6. Other Insurance Requirements.
 - a. Manufacturer shall cause any Subcontractor to procure and maintain adequate levels of insurance coverage for Workers' Compensation, Commercial General Liability, Automobile Liability, and other

coverages Manufacturer may require. For Commercial General Liability and Automobile Liability insurance of any subcontractor, Buyer will be included as an additional insured. Manufacturer shall prepare a schedule of required coverages for each of its Subcontractors and shall submit such schedule to Buyer prior to any Subcontractor commencing any Work on a Task Assignment under this Agreement. Such coverages for any Subcontractors shall be procured and maintained with forms and insurers acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Manufacturer.

- b. Manufacturer shall procure and maintain the insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers reasonably acceptable to Buyer. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Manufacturer pursuant to this clause. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- c. Other insurance with varying limits which from time to time may reasonably be required by the mutual agreement of Buyer and Manufacturer against other insurable hazards relating to the Work to be done.
- d. Every policy required above shall be primary insurance to the extent of Vendor's indemnity obligations and any insurance carried by Buyer, its officers, or its employees shall be excess and not contributory insurance to that provided by Manufacturer. Manufacturer shall be solely responsible for any deductible losses under the policies required above.
- e. Manufacturer shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- f. All policies shall include a provision that the coverages afforded under the policies shall not be canceled, terminated, or materially changed prior to the natural termination date until at least thirty (30) Calendar Days prior written notice has been sent to Manufacturer. Manufacturer shall notify Buyer should this occur. The Certificate(s) shall indicate the form used, if any, under which this provision is included.

- g. **Waiver of Subrogation.** All insurance policies required of Manufacturer shall include a waiver of any right of subrogation written in favor of the Parties to the extent of Manufacturer's indemnity obligations..

E. **Governmental Immunity.** The Parties hereto understand and agree that Buyer, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to Thornton, its agents, officers, or employees.

F. **Independent Contractor.**

1. It is understood and agreed by and between the Parties that the status of Manufacturer shall be that of an independent contractor and is only retained on a contractual basis to perform the services for limited periods of time and it is not intended, nor shall it be construed, that Manufacturer or its employees or subcontractors under Chapter VII of the City Charter, or Chapter 54 of the City Code, are considered employed by Thornton for any purpose whatsoever.
2. Without limiting the foregoing, the Parties hereby specifically acknowledge that **Manufacturer nor** any employee, agent or sub-contractor of Manufacturer **is not entitled to unemployment insurance benefits from the City of Thornton and the only unemployment compensation coverage shall be provided by Manufacturer or some other entity besides Thornton, that Manufacturer is not entitled to Workers' Compensation benefits from Thornton and that Manufacturer is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph must be consistent with Manufacturer's insurance obligations that are set forth in this Agreement.

G. **Grounds for Termination.** Thornton may issue a written Notice of Intent to Terminate for the reasons that follow:

1. **Termination for Convenience.** In the event this Agreement is terminated for convenience, Manufacturer shall only be entitled to the Work it has satisfactorily completed up to the date of termination. Thornton is only responsible to pay Manufacturer for all Work previously authorized and satisfactorily completed prior to the date of the Notice of Termination.
2. **Termination for Cause\Default.** If Manufacturer has substantially or materially breached the terms of this Agreement, and fails to cure such breach, or Thornton declares Manufacturer is in "Default," shall be cause to terminate this Agreement and Thornton may seek to exercise all available remedies.

3. Termination for Non-Appropriations. In the event that the Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may, at the beginning of the fiscal year for which the City Council does not appropriate such funds and upon prior written notice as provided for, may terminate this Agreement without penalty and be released of further obligations.
4. Termination via clauses G1 or G3 above shall be subject to the attached Manufacturer cancellation curve and Buyer would be held responsible for payment as defined within.

H. **Venue / Law / Statute of Limitations.** This Agreement shall be governed by the laws of the State of Colorado, notwithstanding its choice of law principles. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to the Agreement or the Services asserted by Manufacturer against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).

I. **Notice.** Any notice or communication between Manufacturer and Thornton which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class, United States mail, addressed as follows:

THORNTON: City of Thornton
Contracts Supervisor
9500 Civic Center Drive
Thornton, CO 80229-4326

MANUFACTURER: Flowserve US Company
Attn: Mr. Nathan Stal
5215 N. O'Connor Boulevard, Suite 700
Irving, TX 75039

J. **Assignment.**

1. Thornton has the right to assign this Agreement and the furnished Equipment and Special Services, but only to a person or entity with sufficient and ability to satisfactorily perform and assume all of Thornton's rights, duties and obligations this Agreement requires, and Manufacturer hereby consents to such assignment.
2. The Assignment Agreement, which is attached hereto as Exhibit C – Assignment Agreement, must be signed by Thornton, Manufacturer and Contractor.

3. Upon assignment by Buyer, the following provisions shall apply:
 - a. After this Agreement is signed by Buyer ("Assignor"), it will be assigned to the construction contractor ("Assignee") designated by Thornton. The assignment will be effective on the date the construction contract between Thornton and Contractor is signed, which is supposed to occur in or around the second quarter of 2026. On the effective date of assignment, all references in this Agreement to "Buyer" or "Thornton" shall be replaced with Assignee's name.
 - b. Upon the assignment of this Agreement, Assignor shall be relieved of all its rights, duties, and obligations set forth in this Agreement, other than those exceptions made therein. Thereafter, Manufacturer shall become the supplier of Assignee, and all rights, duties, and obligations of Assignor shall inure to, and become the rights, duties, and obligations of Assignee as set forth in this Agreement.

4. After assignment:
 - a. the Drawings and Specifications, and any modifying Addenda will by this reference become the "Contract Documents" in the Construction Contract.
 - b. should the Drawings and/or Specifications need to be modified, then Manufacturer and Assignee shall enter into and execute a Change Order in accordance with this Agreement.
 - c. The Drawings and Specifications may not be modified unilaterally by either Manufacturer or Assignee, provided, however, the Drawings and Specifications may be duly modified in accordance with the applicable terms and conditions of the Construction Contract.
 - d. all performance warranties, guarantees, and indemnifications required by the Agreement will continue to run for the benefit of Assignor, as the Project Owner, and Assignee, as Contractor. However, should Assignor and Assignee make any warranty, guarantee or indemnification claim, then Manufacturer shall be responsible for answering to only one claim. Other than its remedies available under any warranty, guaranty, or indemnification obligation, Assignor does not retain any other rights under this Agreement, but does retain all its rights and remedies available as a party to the Construction Contract. Assignee agrees to perform the scope of work as set forth in the Drawings and Specifications, and any modification to the Drawings and Specifications shall require a written amendment. Any limitations of Manufacturer's liability by this Agreement are binding on, and will continue to belong to Assignor even after assigning this Agreement.

- i. After assignment, Manufacturer agrees to submit all Applications for Payment directly to Assignee as Contractor.
 - a) Assignee shall promptly review each application for payment, approve the application for payment and then submit the amount of approved application for payment with its next application for payment to Thornton in accordance with the Construction Contract's application for payment provisions.
 - b) Assignee shall pay Manufacturer within thirty (30) Calendar Days of receipt of payment from Assignor in accordance with the applicable provisions in the Construction Contract.
 - c) After assignment, Engineer is authorized to review, approve, or deny the content of an application for payment to the extent that Assignee - as Construction Contractor - will ensure the Engineer's review of an application for payment complies with the application for payment process the Construction Contract requires, which is incorporated herein by this reference.
 - ii. Assignor's rights available to any pending claim are hereby granted to Assignee.
- K. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of such terms and conditions.
- L. **Inspection of Records.** In connection with Manufacturer's performance hereunder, Thornton and any of its duly authorized representatives shall have access to all of Manufacturer's books, documents, papers, and any other records of Manufacturer that relate to the Work. Manufacturer further agrees that such records shall contain information concerning the personnel who performed the Work, the specific Work they performed and the hours they worked. Manufacturer shall retain these records for three (3) years after the termination date of this Agreement.
- M. **Conflict of Interest.** Intentionally Omitted.
- N. **Coordination of Services.** Manufacturer shall fully coordinate its Work with other Vendors, contractors, or other entities performing work, which interfaces with or is affected in any way by Manufacturer's Work and with any interested City or other governmental agencies.
- O. **Non-Discrimination.** Intentionally Omitted.
- P. **Advertising and Public Disclosures.** Intentionally Omitted.

- Q. **Time Is Of The Essence.** The Parties agree that in the performance of the terms and conditions of this Agreement by Manufacturer that time is of the essence.
- R. **Inurement.** The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
- S. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- T. **Joint Venture.** If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Manufacturer, which are set forth in this Agreement.
- U. **Taxes and Licenses.** Manufacturer shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to Work which it performs under this Agreement. Manufacturer shall promptly pay, when due, all bills, debts, and obligations it incurs performing Work under this Agreement and to allow no lien, mortgage, judgment, or execution to be filed against the Equipment.
- V. **Severability.** In the event any of the provisions, or the application of any provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.
- W. **No Third Party Beneficiaries.** Except for those Assignment provisions that apply herein, the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Manufacturer and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Manufacturer that subcontractors and any other persons other than Thornton or Manufacturer receiving any benefits from this Agreement shall be deemed incidental beneficiaries only.
- X. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by any applicable City regulation, rule, and/or ordinance. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.
- Y. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained in this entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void

and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those, which are expressly reserved herein to the City Manager or City Manager's designee, shall be valid unless they are contained in an instrument that is executed by all the Parties with the same formality as this Agreement.

Z. **Liquidated Damages.**

1. The Parties agree time is of the essence in the Agreement with respect to the required Milestone Dates (which may be changed or extended in accordance with the terms of the Agreement). The Parties further agree the actual damages Thornton would incur are difficult or impossible to calculate with any certainty but an unexcused delay would cause an inconvenience, increased cost and loss of use by the public should Manufacturer fail to achieve the Milestone Dates as set forth in the table located in Section II.E.2 of this Agreement.
2. As a remedy, and not as a penalty, the Parties mutually agree that for each respective Milestone Date that Manufacturer fails to meet, , Manufacturer will pay **One Thousand Dollars (\$1000)** as Liquid Damages each Calendar Day until that applicable Milestone Date is achieved, which is listed in Section II.E.2 of this Agreement.

Buyer shall have the right to offset the amounts owed as Liquidated Damages, in whole or in part against compensation owed and due to Manufacturer under this Agreement. Thornton will notify Manufacturer in writing of any Liquidated Damages claim before deducting such sums from money owed and payable to Manufacturer. In the alternative, if the Parties mutually agree, Manufacturer shall pay such Liquidated Damages (without offset or deduction of any amounts Thornton claims Manufacturer may owe) by certified or cashier's check or by wire transfer to a bank account designated by Thornton within thirty (30) days of receipt of the invoice, which Thornton may issue until the Milestone Date(s) is achieved.

3. Thornton's right to Liquidated Damages shall not limit its other available remedies, which Thornton may have under this Agreement for breaches other than late delivery. Where no remedy is expressly provided in this Agreement for a breach other than late delivery, the remedies available at law shall apply. Notwithstanding the foregoing, Liquidated Damages shall represent Manufacturer's sole liability and Buyer's sole and exclusive remedy under this Agreement for late delivery hereunder.
4. No delay by the Thornton will be construed as a waiver of its right to assess or collect Liquidated Damages from Manufacturer. Notwithstanding the terms of this Liquidated Damages Section, should a court of competent jurisdiction find all or any provisions in this Section Z, Liquidated Damages, are invalid or unenforceable, Thornton may pursue its actual damages caused by Manufacturer's unexcused delay.

5. Liquidated Damages shall be capped at a max of 10% of this Agreement's value of the delayed/impacted good(s). The sum of all assessed Liquidated Damages shall not exceed 10% of the overall value of this Agreement.

AA. Dispute Resolution.

1. Unless otherwise agreed in writing, Manufacturer shall continue to perform the work towards manufacturing the Equipment by the Milestone Dates during any dispute or dispute resolution proceedings. If Manufacturer continues to perform, Thornton shall continue to make payments in accordance with this Agreement. The Parties shall attempt to resolve the dispute informally between the Parties' chosen representatives.
2. If either Party claims that attempts to resolve the dispute has reached an impasse, the Parties shall refer the dispute to the City Manager or City Manager's designee(s) to reach resolution through good faith direct discussions. The Parties agree the representatives should possess the necessary authority to resolve the dispute. If the dispute remains unresolved thirty (30) days after informal negotiations began, the Parties shall submit the dispute to mediation, which shall be held in the City of Thornton. The Parties shall share equally in the mediator's fees.
3. If mediation is unsuccessful, the Parties may proceed to litigation. Any legal action concerning or arising out of this Agreement shall be brought in the District Court, County of Adams, State of Colorado.
4. Any action arising out of or relating to this Agreement asserted by Manufacturer against Thornton shall be brought within two (2) years from when the action accrued pursuant to C.R.S. § 13-80-102(h), as may be amended.
5. This Agreement shall be governed by the Laws of the State of Colorado notwithstanding its choice of law principles.

BB. ADDITIONAL OBLIGATIONS

1. EXCEPT FOR MANUFACTURER'S OBLIGATIONS TO MAINTAIN REQUIRED INSURANCE COVERAGE, INDEMNITY LIQUIDATED DAMAGES, AND EXPRESS WARRANTY OBLIGATIONS, HE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE, AND THE TOTAL LIABILITY OF THE MANUFACTURER WITH RESPECT TO THIS AGREEMENT SHALL NOT EXCEED THE COSTS AND EXPENSES BUYER INCURRED FOR THE EQUIPMENT FURNISHED BY MANUFACTURER. MANUFACTURER SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY THE BUYER OR ANY THIRD PARTY THAT WERE NOT CAUSED BY MANUFACTURER'S NEGLIGENCE OR DEFECTIVE WORKMANSHIP.

2. Notwithstanding anything to the contrary contained herein, neither party shall be liable for any delays or failures resulting from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, epidemics and/or pandemics, shortage of essential supplies, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest. Notwithstanding the foregoing, in the event of such an occurrence, each party agrees to make a good faith effort to perform its obligations here.
3. Buyer may suspend the Work by giving written notice to Manufacturer stating the cause for suspension and the effective date of suspension. Buyer shall be liable to Manufacturer for the actual costs incurred up to the effective date of the suspension. If the suspension exceeds thirty (30) consecutive days or forty-five (45) days in the aggregate, Manufacturer may elect to cancel the agreement and will receive the compensation as set forth herein.
4. If Buyer requests a delay in the shipment of the Equipment or any part thereof for any reason, the parties shall negotiate the cost, if any, caused by Buyer's request to delay the shipment. After thirty (30) days after the originally scheduled shipment date Buyer must take title and risk of loss of such Equipment, and will be responsible for the cost to storage such Equipment. Manufacturer will invoice Buyer the actual costs and expense Manufacturer incurred to store, ship and deliver the Equipment.
5. The Equipment costs are based on the current of raw materials, supplies, and components, including applicable taxes and duties. If, before delivery, Manufacturer request a cost increase based on factors beyond Manufacturer's control ("Cost Escalation"), Manufacturer shall provide documentation supporting (a) any requested Cost Escalation; and (b) the material, and supplier agreements that caused the Cost Escalation, and the parties shall negotiate an agreed to increase in the price of the Equipment for an amount equal to the actual Cost Escalation; provided, however, if Manufacturer failed to contract for the then prevailing costs of materials, supplies and components required for any needed Equipment part or the Equipment, or failed to secure the materials from suppliers within a reasonable time after entering into this Agreement, Thornton shall be relieved from compensating Manufacturer for any Cost Escalation as result of Manufacturer's failure to use reasonable efforts to mitigate the impact of the Cost Escalation, secure the cost of needed parts, materials and supplies, or failed to enter into an agreement with any subcontractor, and supplier at the time of, or within a reasonable time after entering into this Agreement. Any request for an equitable adjustment of time or cost or both related to a Cost Escalation shall be accompanied by a signed and notarized affidavit indicating that the circumstances leading to any Cost Escalation was unavoidable and Manufacturer took all possible preventative measures to avoid a Cost Escalation assuring that all the information is accurate, correct, and complete.

This Agreement is expressly subject to and will not become effective or binding on Thornton until it is fully approved and executed by Thornton.

APPROVED AS TO LEGAL FORM:

CITY OF THORNTON, COLORADO:

Tami Yellico, City Attorney


Signed by: *Michael J. Hickman*
By: _____
AC87F8D8F0E44C8...
Michael J. Hickman
Senior Assistant City Attorney

Signed by: *Kimberly Newhart*

84A06B022CC540F...
Kimberly Newhart, Finance Director

ATTEST:

CITY OF THORNTON, COLORADO:

Signed by:  *Kristen N. Long*

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Kristen N. Long, City Clerk

DocuSigned by: *Sean Saddler*

31744714E4834C9...
Sean Saddler, PE
Interim Executive Director, Management Services

ATTEST FOR FIRM SIGNATURE:	FLOWSERVE US COMPANY:
(If corporation)	
Signed by: <i>Nate Stal</i> _____ C97AB3FFAA6E4C0...	Signed by: <i>Kadeem Bhaila</i> _____ F736E167F2B34F7...
Signature	Signature
Nate Stal	Kadeem Bhaila
Print Name	Print Name
Director, Commercial Operations	Director, Plant Manager
Title	Title

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EXHIBIT A

TECHNICAL SPECIFICATIONS (UNDER SEPARATE COVER)

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EXHIBIT B

PROJECT PLANS (UNDER SEPARATE COVER)

EXHIBIT C

ASSIGNMENT AGREEMENT

Thornton Water Project – Pre-Purchase Pumps, Project No. 12-777J3

This assignment will commence on the date Buyer, as Assignor, and Contractor, as Assignee enter into the Construction Contract (“Effective Date”).

This Agreement between Thornton and Manufacturer to manufacture the Equipment, and for the Special Services, is hereby assigned and transferred to Contractor (“Assignee”) by Thornton (“Assignor”). Upon assignment by Assignor, Assignee shall assume the duties, rights, and obligations of Assignor in accordance with the terms and conditions of the Agreement, and will also be responsible to Assignor as set forth in the Construction Contract. Hereafter, Assignee and Manufacturer shall perform their respective obligations and responsibilities to each other the Agreement requires. Thornton, Manufacturer, and Contractor hereby acknowledge and agree to be bound by this assignment to the terms and conditions of this Agreement entered into by and between Thornton and Manufacturer on this __ day of _____, 2026.

The Effective Date of this Assignment Agreement is concurrent with the Construction Contract date signed by Thornton and Contractor.

Assignment made by Thornton:

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Manufacturer:

Vendor Name: _____

By: _____ Date: _____

Name: _____ Title: _____

Assignment Acknowledged and Accepted by Contractor/Assignee:

Contractor Name: _____

By: _____ Date: _____

Name: _____ Title: _____