



CITY OF GEARHART

Staff Report

For City Council Meeting - 2/1/2023

Subject - New Business - Request for Funds - Water Reserve Fund

Synopsis: Public Works is requesting water reserve funds up to \$85,000 for the purchase of new water filters (modules). Per Gearhart Public Works Director Mark McFadden: *We have 96 water treatment filters that have an expected life span of 5 to 8 years depending upon conditions and usage. Ours will be 7 years old in March 2023.*

I am requesting the approval of \$84,216 from the water reserve fund. If we can get these ordered by March, they will waive the shipping fee of \$6000.

After March, the price will go up to \$90,216. They are located in California, so they should arrive soon after ordering.

Council Options:

- 1) Approve the request for funds up to \$85,000;
- 2) Take other action;
- 3) Deny the request.

Recommendation: Staff recommends approving the request for funds up to \$85,000 to purchase replacement water filters.

Recommended Motion

Move to allow up to \$85,000 allocation in water reserve funds to purchase replacement water treatment filters.

Legal Analysis: N/A

Financial Analysis: The City currently has \$1,362,627.74 in the water reserve fund. Per Ordinance 934, the attached sole source procurement form will be used. (The manufacturer has trademarked the product.)

Respectfully Submitted,

A handwritten signature in black ink, appearing to be the name 'Chad', written in a cursive style.

Chad

FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES Filmtec Corporation		Document Date 01/11/2023	Order Number 41164186	
		Customer P.O. number 12122022	12/12/2022	
Ship-to / Consignee 11004901 CITY OF GEARHART c/o GEARHART CITY OF 698 PACIFIC WY GEARHART OR 97138	Sold-to 11006394 CITY OF GEARHART c/o GEARHART CITY OF PO Box 2510 GEARHART OR 97138			
Forwarding Agent/Notify Party/End User				
Transport Mode Road	Shipping Point SARDO & SONS WHSE 0014 WS			
Carrier / Drayage CUSTOMER ARRANGED TRANSPORT	Country Shipped From United States	Country of Destination United States		
Unloading Point		Remit to WIRE/ACH: Acct: 40512844 ABA ACH/Domestic Wire Only: 021000089 Swift Code International Wires: CITIUS33 Citibank, 111 Wall Street, New York, NY 10043 CHECK PAYMENTS: 4118 Collection Center Drive Chicago, IL 60693-0077 Please reference on payments.		
Terms of Delivery and Payment PPD Destination NET 30 DAYS FROM INVOICE DATE				
Item #	Goods Description Shipping Marks	Quantity	Unit Price	Amount
10	Valid to: 03/31/2023 This quotation is valid through the above expiration date. 12038357 MODULE, SPARE S10N PVDF Gross Weight: 823.008 KG / 1,814.424 LB Net Weight: 783.840 KG / 1,728.073 LB No. of Pkgs: 96 NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)	96 EA	850.00 USD / EA	81,600.00 USD
	Confirm Date 12/15/2022	Quantity 96 EA		

FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES		FilmTec Corporation		Document Date 01/11/2023	Order Number 41164186
				Customer P.O. number 12122022	
Item #	Goods Description Shipping Marks	Quantity	Unit Price	Amount	
20	12032200 GASKET, BOTTOM CLOVER EPDM 9710 3 HOLE ;	96 EA	0.50 USD / EA	48.00 USD	
		Confirm Date <u>12/15/2022</u>	Quantity 96 EA		
		Gross Weight:	0.288 KG / 0.635 LB		
		Net Weight:	0.288 KG / 0.635 LB		
		No. of Pkgs:	96		
		NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)			
30	12038845 MANIFOLD, CLOVER TOP CS NYLON SS STUD-119006	2 EA	25.00 USD / EA	50.00 USD	
		Confirm Date <u>12/15/2022</u>	Quantity 2 EA		
		Gross Weight:	2.858 KG / 6.301 LB		
		Net Weight:	2.722 KG / 6.001 LB		
		No. of Pkgs:	2		
		NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)			
40	12037192 MANIFOLD, CLOVER BTM GFPP DURAPROP;	2 EA	25.00 USD / EA	50.00 USD	
		Confirm Date <u>12/15/2022</u>	Quantity 2 EA		
		Gross Weight:	0.134 KG / 0.295 LB		
		Net Weight:	0.128 KG / 0.282 LB		
		No. of Pkgs:	2		
		NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)			

FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES FilmTec Corporation	Document Date 01/11/2023	Order Number 41164186
	Customer P.O. number 12122022	

Item #	Goods Description Shipping Marks	Quantity	Unit Price	Amount
50	12038846 CLIP, CLOVER MODULE CS/CSII	8 EA	1.00 USD / EA	8.00 USD
	<p style="text-align: right;">Confirm Date <u>12/15/2022</u></p> <p style="text-align: right;">Quantity 8 EA</p> <p>Gross Weight: 1.216 KG / 2.681 LB Net Weight: 1.160 KG / 2.557 LB No. of Pkgs: 8 NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)</p>			
60	12037177 O-RING, EPDM 9710 148.6MMx5.7MM BLUE DT;	8 EA	1.00 USD / EA	8.00 USD
	<p>Energy Surcharge\$</p> <p style="text-align: right;">Confirm Date <u>12/15/2022</u></p> <p style="text-align: right;">Quantity 8 EA</p> <p>Gross Weight: 0.128 KG / 0.282 LB Net Weight: 0.120 KG / 0.265 LB No. of Pkgs: 8 NOT REGULATED (NOT DANGEROUS FOR TRANSPORT)</p>			2,452.00
		Subtotal		84,216.00
				84,216.00 USD
	<p>Total</p> <p>Gross Weight: 827.632 KG / 1,824.618 LB Net Weight: 788.258 KG / 1,737.813 LB Total number of Pieces: 212</p> <p>INFORMATION: Att: Mark McFadden @ 503-338-9360</p>			

FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES FilmTec Corporation	Document Date 01/11/2023	Order Number 41164186
	Customer P.O. number 12122022	12/12/2022

Item #	Goods Description Shipping Marks	Quantity	Unit Price	Amount

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CONTACT: John Shibilski Ph.:	JOHN.SHIBILSKI@DUPONT.COM Fax:
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FILMTEC CORPORATION 5400 DEWEY HILL RD EDINA MN 55439-2085 UNITED STATES <i>FilmTec Corporation</i>	Document Date 01/11/2023	Order Number 41164186
	Customer P.O. number 12122022	12/12/2022

STANDARD CONDITIONS OF SALE

1. Seller warrants only that (a) any products or services provided hereunder meet Seller's standard specifications for the same or such other specifications as may have been expressly agreed to herein; (b) the sale of any products or services provided hereunder will not infringe the claims of any validly issued United States patent covering such product or service itself, but does not warrant against infringement by reason of (i) the use of any information provided, (ii) the use of any product or service in combination with other products, services, or information or in the operation of any process, or (iii) the compliance by Seller with any specifications provided to Seller by Buyer; and (c) all products provided hereunder were produced in compliance with the requirements of the Fair Labor standards Act of 1938, as amended. WITH RESPECT TO ANY PRODUCTS, SERVICES, OR INFORMATION PROVIDED TO BUYER, SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY. Buyer assumes all risk and liability resulting from use of the products, services, or information delivered hereunder, whether used singly or in combination with other products, services, or information.
2. IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY TO BUYER FOR ALL DAMAGES ARISING FROM ANY AND ALL CLAIMS RELATED TO THE BREACH OF THIS AGREEMENT, NONDELIVERY, OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION COVERED BY THIS AGREEMENT, REGARDLESS OF WHETHER THE FORM OF ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS, SERVICES, OR INFORMATION IN RESPECT OF WHICH DAMAGES ARE CLAIMED. NO CLAIM SHALL BE ALLOWED FOR PRODUCT THAT HAS BEEN PROCESSED IN ANY MANNER. FAILURE TO GIVE NOTICE OF A CLAIM WITHIN NINETY (90) DAYS FROM DATE OF DELIVERY, OR THE DATE FIXED FOR DELIVERY (IN CASE OF NONDELIVERY) SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS IN RESPECT OF SUCH PRODUCTS, SERVICES, OR INFORMATION. PRODUCTS SHALL NOT BE RETURNED TO SELLER WITHOUT SELLER'S PRIOR WRITTEN PERMISSION. NO CHARGE OR EXPENSE INCIDENT TO ANY CLAIMS WILL BE ALLOWED UNLESS APPROVED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. IN ADDITION, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ANY CLAIM TO INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR MULTIPLIED DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES WAIVE AND AGREE NOT TO ASSERT NON-CONTRACTUAL CLAIMS ARISING UNDER STATE LAW RELATING TO THIS AGREEMENT OR THE PROVISION OF ANY PRODUCT, SERVICE, OR INFORMATION COVERED BY THIS AGREEMENT, AND THIS AGREEMENT SHALL BE DEEMED TO INCLUDE SUCH LANGUAGE AS MAY BE REQUIRED TO EFFECT SUCH WAIVER. WAIVER BY EITHER PARTY OF ANY DEFAULT BY THE OTHER HEREUNDER SHALL NOT BE DEEMED A WAIVER BY SUCH PARTY OF ANY DEFAULT BY THE OTHER WHICH MAY THEREAFTER OCCUR.
3. No liability shall result from delay in performance or nonperformance, directly or indirectly caused by circumstances beyond the control of the party affected, including, but not limited to, act of God, fire, explosion, flood, war, act of or authorized by any Government, accident, labor trouble or shortage, pandemic, inability to obtain material, equipment or transportation, failure to obtain or hardship in obtaining reasonably priced supplies of materials, or failure of usual transportation mode. Quantities so affected may be eliminated from the agreement without liability, but the agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the product specified herein to enable it to perform this Agreement.
4. If for any reason including but not limited to Force Majeure Seller is unable to supply the total demand for products specified herein, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
5. Seller may furnish such technical assistance and information as it has available with respect to the use of the products or services covered by this agreement. Unless otherwise agreed in writing, all such information will be provided gratis. Buyer agrees to evaluate such information, to make an independent decision regarding the suitability of such information, products and services for Buyer's application, and only use such products, services and information pursuant to then current good product stewardship principles and all regulatory requirements applicable to Buyer's business.
6. Buyer acknowledges that it has received and is familiar with Seller's labeling and literature concerning the products and its properties. Buyer will forward such information to its employees, contractors and customers who may distribute, handle, process, sell or use such products, and advise such parties to familiarize themselves with such information. Buyer agrees that products sold hereunder will not knowingly be resold or given in sample form to persons using or proposing to use the products for purposes contrary to recommendations given by Seller or prohibited by law, but will be sold or given as samples only to persons who can handle, use and dispose of the products safely. Unless agreed to by Seller in a written agreement covering such use, in no event shall Buyer use products or resell products for use in the manufacture of any implanted medical device. Buyer agrees that export of any product, service or information provided hereunder shall be in accordance with applicable Export Administration Regulations.
7. Except as may be contained in a separate trademark license, the sale of product (even if accompanied by documents using a trademark or trade name of Seller) does not convey a license, express or implied, to use any trademark or trade name of Seller, and Buyer shall not use any trademark or trade name of Seller in the conduct of its business without Seller's prior written consent.
8. The Buyer shall reimburse the Seller for all taxes, (excluding income taxes) excises or other charges which the Seller may be required to pay to any Government (National, State or Local) upon the sale, production or transportation of the products, services, or information sold hereunder.
9. In the event Buyer fails to fulfill Seller's terms of payment, or in case Seller shall have any doubt any time as to Buyer's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security.
10. This agreement is not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller. Seller reserves the right to sell, assign, or otherwise transfer its right to receive payment under this agreement.
11. Dispute Resolution and Arbitration - Buyer and Seller agree to arbitrate all disputes, claims or controversies whether based on contract, tort, statute, or any other legal or equitable theory, arising out of or relating to (a) this Agreement or the relationship which results from this Agreement, (b) the breach, termination or validity of this Agreement, (c) the purchase or supply of any product, service, or information provided by Seller, (d) events leading up to the formation of Buyer's and Seller's relationship, and (e) any issue related to the creation of this Agreement or its scope, including the scope and validity of this paragraph. The parties shall before and as a condition to proceeding to arbitration attempt in good faith to resolve any such claim or controversy by mediation under the International Institute for Conflict Prevention & Resolution ("CPR") Mediation Procedure then currently in effect. Unless the parties agree otherwise, the mediator will be selected from the CPR Panels of Distinguished Neutrals. Any such claim or controversy which remains unresolved 60 days after the appointment of a mediator or 60 days after good faith efforts by either party to proceed to mediation shall be finally resolved by binding arbitration in accordance with the CPR Rules for Non-Administered Arbitration then currently in effect by three independent and impartial arbitrators, none of whom shall be appointed by either party. This Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to the exclusion of any state laws inconsistent therewith. Such arbitration shall be conducted in a city to be chosen by the arbitrators which is not the principal place of business of either party, and the arbitrators and the parties shall conduct such arbitration in accordance with such procedures as may be necessary to permit use of the then current CPR Arbitration Appeal Procedure. Any judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. In the event that either party wishes to appeal an award, the parties shall follow the then current CPR Arbitration Appeal Procedure. Buyer and Seller agree not to file or join any class action or class arbitration, seek or consent to class relief, or seek or consent to the consolidation or joinder of its claims with those of any third party. If any clause within this Arbitration Provision (other than the agreement regarding the conduct of the arbitration in the preceding sentence) is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision, and the remainder of the Arbitration Provision will be given full force and effect. If such agreement regarding the conduct of the arbitration is found to be illegal or unenforceable and if the arbitrators permit a class arbitration or consolidated or joined matter to proceed, this entire Arbitration Provision will be unenforceable, and the dispute may be decided by a court. The obligations set forth in this paragraph shall survive the termination or expiration of this Agreement.
12. In addition to these Standard Conditions of Sale, any Special Conditions of Sale set forth on this invoice or in the current price list for the products or services sold hereunder shall apply and are incorporated by reference. Unless otherwise specified therein, title, liability for and risk of loss to Product sold hereunder passes to Buyer upon loading for shipment at Seller's producing location.
13. This Agreement shall be construed and governed by Delaware law, without regard to any applicable conflicts of law provisions, and the terms of the UCC, rather than the United Nations Convention on Contracts for the International Sale of Goods, shall apply.
14. Except as expressly provided in any other term or condition of this Agreement, any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
15. As part of the sale of goods hereunder, Seller may collect, use and disclose Personal Information about Buyer including company name, address, banking and credit information as well as name, phone number, email address and other contact details of natural persons within Buyer's organization and Buyer's contractors. Seller may share Personal Information with its affiliates and selected third parties around the world in order to complete the sale of goods, as described in Seller's privacy statement. <https://www.dupont.com/privacy.html>
16. This Agreement supersedes all prior agreements, representations and understandings between the parties (whether written or oral) with respect to its subject matter and constitutes (along with the exhibits and schedules attached hereto) a complete and exclusive statement of the terms of the agreement between the parties with respect to the provision of products or services hereunder. Not by way of limitation of the unqualified nature of the foregoing, Buyer acknowledges, agrees and represents that it is not relying upon, and it has not been induced by, any representation, warranty, statement made by, or other information provided by Seller in connection with its decision to purchase or use any product, service, information or technology, other than the representations and warranties Seller as and only to the extent expressly provided in this Agreement. No modification of this Agreement shall be binding upon Seller unless separately contracted in writing and executed by a duly authorized representative of Seller. No modification shall be effected by the acknowledgment or acceptance of purchase order forms stipulating different conditions. Unless Buyer shall notify Seller in writing to the contrary as soon as practicable after receipt of this invoice by Buyer, Buyer shall be deemed to have accepted the terms and conditions hereof and, in the absence of such notification, Buyer's acceptance or use of the products, services, information or technology shall be equivalent to Buyer's assent to the terms and conditions hereof.

SOLE SOURCE PROCUREMENT FORM

ORS 279B.075 Sole-source procurements. (1) A contracting agency may award a contract for goods or services without competition when the local contract review board determines in writing, in accordance with rules adopted under ORS 279A.065, that the goods or services, or class of goods or services, are available from only one source. (2) The determination of a sole source must be based on written findings that may include: (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services; (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; (c) That the goods or services are for use in a pilot or an experimental project; or (d) Other findings that support the conclusion that the goods or services are available from only one source. (3) To the extent reasonably practical, the contracting agency shall negotiate with the sole source to obtain contract terms advantageous to the contracting agency.

OAR 137-047-0275 Sole-source Procurements. (1) Generally. A Contracting Agency may Award a Contract without competition as a sole-Source Procurement pursuant to the requirements of ORS 279B.075. (2) Public Notice. If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source. The Contracting Agency shall publish such notice in a manner similar to public notice of competitive sealed Bids under 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give Affected Persons at least seven (7) days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole source determination. (3) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with OAR 137-047-0710.

Project Name: Water System Improvements Contract Value: \$ 84,216.00

1. Pursuant to ORS 279B.075 (2)(a): Provide findings supporting your determination that the efficient utilization of existing goods requires the acquisition of compatible goods or services from only one source. *[Provide clear and concise information to support this determination.]*

The City of Gearhart's water management plant was build with specific supplies and materials provided by FilmTec™. These replacement products are trademarked and can only be replaced with FilmTec™ products.

2. Pursuant to ORS 279B.075 (2)(b): Provide findings supporting your determination that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source. *[Provide clear and concise information to support this determination.]*

n/a - the goods or services required are not for the exchange of software or data with other public or private agencies.

3. Pursuant to ORS 279B.075 (2)(c): Provide findings supporting your determination that the goods or services are for use in a pilot or an experimental project. *[Provide clear and concise information to support this determination.]*

n/a - The supplies and materials ordered were to replace existing, same manufacturer/products.

4. Pursuant to ORS 279B.075 (2)(d): Any other findings that support the conclusion that the goods or services are available from only one source. *[Provide clear and concise information to support this determination. If there is more than one finding that supports this determination, please address them independently.]*

Leveraging proven and highly effective patented technologies, such as reverse osmosis (RO) and nanofiltration (NF), FilmTec™ products reject more dissolved solids and organics, and use less energy to produce permeate, than typical elements. This company was needed to replace products that were already existing, but needed replaced.