



**TOWN OF CASTLE ROCK
EQUIPMENT AND SERVICES ACQUISITION AGREEMENT
(PCWPF Pall Interface Upgrade)**

DATE: August 26, 2022

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

PALL CORPORATION, a New York corporation, 839 State Route 13, Cortland, New York 13045 (“Contractor”).

RECITALS:

- A. The Town wishes to engage Contractor to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Contractor shall perform all of the services and provide all materials as set forth on *Exhibit 1* (“Work”). Contractor shall complete the Work consistent with standards and practices of the profession.

Section 2. Total Obligation. The Town’s total obligation to Contractor under this Agreement for the Work shall not exceed \$106,865.66, unless authorized in writing by the Town.

Section 3. Payment. Contractor shall invoice Town upon completion of the Work. Town may withhold payment in whole, or in part for the Work found by the Town to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, not in conformance with all applicable federal, state, and local laws, ordinances, rules and regulations, or if Contractor is in default of Section 6, below. Town shall remit payment, whether whole or in part within 15 days receipt of such invoice.

Section 4. Completion. Contractor understands time is of importance to this Agreement. Contractor shall commence the Work upon execution of this Agreement and complete the Work not later than December 31, 2022. Contractor shall devote adequate resources to assure timely completion of the Work in accordance with the standards specified in this Agreement. Contractor shall perform the Work under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Contractor. The Town’s obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 5. Subcontractors. Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Work. Contractor will submit any proposed subcontractor and the description of subcontractor services to the Town for its prior approval.

Section 6. Inspection and Warranty. Town reserves the right to inspect the Work provided under this Agreement at all reasonable times and places during the term of this Agreement. Alternatively, the Town may refuse the Work and cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the Work in accordance with the terms and conditions of this Agreement. Failure by the Town to inspect and test the Work shall not relieve Contractor of such responsibility. Any acceptance by the Town shall not be deemed a waiver or settlement of any defect or nonconformity in such Work.

Contractor expressly warrants that all materials and/or equipment furnished under this Agreement shall be free from defects in materials or workmanship, are installed properly and in accordance with the manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation (“Warranty Period”). Town shall notify Contractor promptly in writing of any claims within the Warranty Period and provide Contractor with an opportunity to inspect and test the materials and/or equipment claimed to fail to meet this warranty. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this warranty, Contractor shall, at its option and in its sole discretion, either: (a) accept return of the defective materials and/or equipment and furnish replacement materials and/or equipment; (b) furnish replacement parts for the defective materials and/or equipment; or (c) repair the defective materials and/or equipment. If Contractor determines that any warranty claim is not, in fact, covered by this warranty, Town shall pay Contractor its then customary charges for any additionally required service or products. Additionally, Contractor agrees to assign to the Town all written manufacturer warranties relating to the supplies and to deliver such written warranties to the Town.

Contractor further warrants that all services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (“Warranty for Services”); this Warranty for Services shall survive for 30 days following Contractor’s completion of the services (the “Service Warranty Period”). In the event of a warranty claim under this Warranty for Services, Town shall inform Contractor promptly in writing of the details of the claim within the Service Warranty Period. Contractor’s liability under any service warranty is limited, in Contractor’s sole discretion, to repeating the service that during the Service Warranty Period does not meet this Warranty for Services or issuing credit for the nonconforming portions of the service. If Contractor determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Town shall pay Contractor its then customary charges for all services performed by Contractor.

Contractor does not warrant against, and in no event shall Contractor be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Contractor), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of

Town. In no event shall Contractor be liable for any material and/or equipment repaired or altered by someone other than Contractor other than pursuant to written authorization by Contractor. All product warranties and performance guarantees shall only be enforceable if (a) all equipment is properly installed, inspected regularly and is in good working order, (b) all operations are consistent with Contractor recommendations, (c) operating conditions at the job site have not materially changed and remain within anticipated specifications, and (d) no reasonably unforeseeable circumstances exist or arise.

Section 7. Risk of Loss. With respect to any equipment provided under this Agreement, risk of loss shall not pass to the Town until such equipment has been received and accepted by the Town, pursuant to Section 6, above, at the destination specified by the Town. Contractor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement by the Town to pay freight, express or other transportation charges.

Section 8. Annual Appropriation. The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Town shall provide Contractor with immediate written notification, stating that the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 9. Assignment. This Agreement shall not be assigned by Contractor without prior written notice to the Town.

Section 10. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 11. Insurance. Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

4. Professional Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) per claim and ONE MILLION DOLLARS (\$1,000,000) aggregate.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation and Professional Liability insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Contractor's insurance agent and submitted at the time of execution of this Agreement as **Exhibit 2** as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the

certificate. The Town reserves the right to request and receive a certificate of insurance of the listed policies and any endorsement thereto.

D. Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

Section 12. Colorado Governmental Immunity Act. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 13. Indemnification. Contractor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Contractor.

Section 14. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 15. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 16. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 17. Time of Importance. Time is of importance. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party if the defaulting party does not commence to cure the default within thirty (30) days of receiving a written notice of default from the non-defaulting party.

Section 18. Default and Remedies. In the event either party should default in performance of its obligations under this Agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR REINSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY TOWN OR COULD HAVE BEEN REASONABLY FORESEEN BY TOWN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS WORK OR ANY OTHER CAUSE WHATSOEVER. IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CONTRACTOR FOR THE WORK SOLD HEREUNDER.

Section 19. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 20. Governing Law. This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

Section 21. Independent Contractor. Contractor has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. In addition to the Affidavit, Contractor and the Town hereby represent that Contractor is an independent contractor for all purposes hereunder. Contractor represents and warrants that they are free from the Town's direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Contractor represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the Town.

Section 22. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Contractor, and nothing contained

in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

Section 24. Intellectual Property; Information Technology; Privacy. Contractor retains all rights in and to any intellectual property and confidential information created or procured by it or its representatives at any time, and Contractor grants Town a non-exclusive, non-transferable license to use such intellectual property and information to the extent necessary and solely for Town’s use of Work purchased hereunder. No Town information technology requirements apply, except the extent such requirements specifically apply to equipment being sold to Town. To help ensure mutual compliance with applicable privacy laws, Town will not provide to or share with Contractor any personal data or personally identifiable information.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

David L. Corliss, Town Manager

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Mark Marlowe, Director Castle Rock Water

CONTRACTOR:

PALL CORPORATION

By: _____ 

Its: _____

EXHIBIT 1

SCOPE OF WORK AND FEE SCHEDULE

Contractor shall upgrade the Pall Aria Membrane System's Pneumatic Solenoid Bank Interface equipment at the Plum Creek Water Purification Facility as follows:

Scope of Services

Pall Water will provide, configure and install an upgraded G3 Numatics solenoid manifold for each of four Valve Racks, Feed System and CIP system for the Town of Castle Rock, CO water treatment plant.

- 1) Valve Rack Manifold - 21 Valve Numatics Bank, G3, qty 4
- 2) Feed System Manifold - 8 Valve Numatics Bank, G3, qty 1
- 3) CIP Manifold - 11 Valve Numatics Bank, G3, qty 1
- 4) Sixteen (16) Spare Single Valve Solenoid Numatics Part Number 051BA4Z5MN11B61 for G3 Numatics Block

The new manifolds will be shipped completely assembled. Once the materials are received and engineering is complete, Pall will work with the customer to schedule a Field Service Engineer (FSE) to the customer's site to

- complete the physical change-out of the Numatics hardware
- complete necessary wiring changes for power connections to the new Numatics hardware,
- install the updated programming,
- test the new installation and make any needed adjustments.

Work will be considered complete when the FSE demonstrates that the new manifolds are working as intended. Pall expects the FSE will require up to seven (7) full working days to complete this work. Within two weeks of completion, Pall will send updated electrical drawings to the customer for their records and use.

Programming changes will be done remotely via TeamViewer connection. This eliminates the expense of sending a software engineer to the customer's site. Pall Water will coordinate the timing of this work with the customer to minimize any potential disruptions to production.

Disclaimer: This proposal is based on information and conditions known at the time of quotation. Pall Water reserves the right to revise this proposal through change order(s) should conditions vary significantly from those known at the time of quotation and require additional work or materials.

PROPOSAL SUMMARY


G3 Upgrade with Installation by an FSE	\$106,865.66
----------------------------------------	--------------

EXHIBIT 2

CONTRACTOR'S 
CERTIFICATE OF INSURANCE

EXHIBIT 3

TOWN OF CASTLE ROCK AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS

I, _____  (print name), an authorized representative of **PALL CORPORATION**, holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.


In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, I represent and warrant that it is my express intention to be employed as an independent contractor of the Town of Castle Rock (the “Town”) for purposes of performing the work or services which are the subject of the Agreement. I understand and confirm that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require I work exclusively for the Town, except that I may choose to work exclusively for the Town for a finite period of time specified in the document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the _____ work _____ is _____ performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- I am not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide me with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may _____ be _____ supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.

- The Town does not pay me personally but rather makes checks payable to the trade or business name of the entirety for which I am employed and who is a party to the Agreement; and the Town does not combine their business operations in any way with the entity's business, but instead maintains such operations as separate and distinct.
- I understand that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **I UNDERSTAND THAT I AM NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY ME OR THE ENTITY FOR WHICH I AM EMPLOYED.**
- **I UNDERSTAND THAT I AM OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR/CONSULTANT/VENDOR

PALL CORPORATION

By: _____  _____

Name

STATE OF COLORADO)

) *ss.*

COUNTY OF _____)

The foregoing instrument as acknowledged before me this __ day of _____, 20__ by _____ as _____ of the above mentioned Contractor/Consultant/Vendor.

Witness my official hand and seal.

My commission expires:

Notary Public