

RESOLUTION NO. 914

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS FOR REPLACEMENT OF THE STORMWATER FILTER CARTRIDGES LOCATED AT QUAIL RUN STORMWATER TREATMENT VAULTS FROM CONTECH ENGINEERED SOLUTIONS/STORMWATER MANAGEMENT INC.

WHEREAS, the City of Gig Harbor (the City) is required to properly operate and maintain all public stormwater control and treatment facilities per the City's National Pollutant Discharge Elimination System (NDPES) Phase 2 Municipal Stormwater Permit issued by the Washington State Department of Ecology; and

WHEREAS, at the Quail Run stormwater control and treatment facility operated and managed by the City, it was found that the stormwater filter cartridges in the treatment vaults need to be replaced; and

WHEREAS, Contech Engineered Solutions/Stormwater Management Inc. originally supplied the stormwater filter cartridges; and

WHEREAS, Contech Engineered Solutions/Stormwater Management Inc. is the sole source owner, manufacturer, distributor and supplier for the stormwater filter cartridges; and

WHEREAS, the City's purchasing policy set forth in Resolution No. 593 authorizes the waiver of competitive bidding in the event the product comes from a sole supplier; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:

Section 1. Waiver of Competitive Bidding. As authorized by Section 2 of Resolution No. 593, competitive bidding is hereby waived for the replacement of stormwater filter cartridges, as Contech Engineered Solutions/Stormwater Management Inc. is the sole supplier of the product.

RESOLVED this 13th day of November, 2012.

CITY OF GIG HARBOR


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



FILED WITH THE CITY CLERK: 10/31/12
PASSED BY THE CITY COUNCIL: 11/13/12
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Quote # QUO-136040-ZC3HF5					
Date	10/17/2012	Account Name	City of Gig Harbor	Reply-To	
Quote #	QUO-136040-ZC3HF5	Contact Name	Wayne Matthews	Contech Rep.	Dave Jerke
		Phone	(253) 853-1646	Address	11835 NE Glenn Widing Dr. Portland, OR 97220
Project Name	MAINT Quail Run -1703	Fax	(253) 853-7597	Phone	(503) 258-3137
Project #	472437	Email	matthewsw@cityofgigharbor.net	Fax	(877) 927-4602
Project City/State	Gig Harbor, WA			Email	DJerke@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	Cartridge - Refurbished, 18" StormFilter Slip - CSF - System Type : StormFilter Vault, Structure Size : Panel - 11.5x36.5, # Carts : 135	135.00	135.00	\$65.00	EA	\$8,775.00
	Maintenance - Freight - Notes for Quote : Shipping to customer yard.	1.00	1.00	\$725.00	EA	\$725.00
	Maintenance - Freight - Notes for Quote : Return freight for empty cartridges. Empty cartridges must be packaged same as replacements were received.	1.00	1.00	\$725.00	EA	\$725.00
					Total	\$10,225.00
					(Tax not included) Net Total	\$10,225.00

Standard Notes

1. Contech Engineered Solutions offers replacement cartridges that contain the proper media per the original system design. Contech ships replacement cartridges to the Customer or Customer may pick cartridges up as a Will Call from our Portland Production Facility prior to the actual field work. Delivery schedules must be confirmed in advance. Replacement cartridges are typically available for shipment within 10 business days of signed authorization. Contech will notify the Customer when the cartridges are available. Customer is responsible for having a representative available and prepared to offload the palletized cartridges at the time of delivery. If Customer is planning on a Will Call, Customer is responsible for providing a copy of the executed and accepted Cartridge Exchange Quote at the time of Will Call. Cartridges will not be released without this documentation.

Customer agrees to return an equal number of empty complete and undamaged cartridges to Contech no later than 30 days after delivery or Will Call. A charge of \$500.00 per cartridge will be incurred by the Customer if empty cartridges are not returned. Empty cartridges must be returned to:

16300 NE Mason Street
Portland, OR 97230

For proper credit, a copy of the executed and accepted Cartridge Exchange Quote must accompany the empty cartridges at the time of return. Cartridges will not be accepted without this documentation.

The Customer is responsible for all coordination with the maintenance contractor, their jurisdiction and disposal facility. Contech can work with the customer to provide training.

Contech does not provide a Certificate of Compliance for inspection or maintenance as part of the Cartridge Exchange Program.

Scope Of Work

Maintenance

Maintenance

Inspection and or cleaning services to be performed and the related charges are based upon the assumption of unrestricted access, dry conditions, non-hazardous materials, no inappropriate discharges, no requirements for permitted traffic control, and reasonable pollutant loading. Reasonable pollutant loading is defined as an accumulation not greatly exceeding the level at which cleaning is recommended by the manufacturer of the BMP. If site conditions suggest the presence of hazardous materials, all work will be stopped. The Customer may be required to characterize (via analytical testing) the accumulated materials for disposal prior to conducting the field work. Work arising from the presence of regulated materials in excess of permitted levels will be billed as extra services. Regulated materials include but are not limited to: Pesticides, Herbicides, Insecticides, Solvents, Fuels, Strong Acids or Bases, Free Oils and/or Greases. Additional costs arising from any of the aforementioned conditions will be agreed upon by the Seller/Buyer prior to work being performed.

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PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<u>Acceptance</u>		<u>Contech Engineered Solutions LLC.</u>	
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos		By	Dave Jerke
Company		(O)	(503) 258-3137
By		(F)	(877) 927-4602
Title		(Cell)	
Date		Title	

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Contech - CONDITION OF SALES

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OF WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the goods sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the goods sold under this contract are free from defects in material and workmanship for a period of one year after the date of delivery. There are no warranties, express or implied with respect to products sold hereunder which are misused, abused, or used in conjunction with mechanical equipment improperly designed, used or maintained or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller's is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the goods purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to goods manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph. paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify for itself that they conform to the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective goods within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. If this proposal includes furnishing labor to install products, applicable use taxes have been included in the prices quoted. However, no other tax imposed in respect of the sale of the products sold hereunder is included in any quotation by Seller. Any tax shall be added and paid by Buyer as part of the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:
(1) the contract price for all products which have been completed prior to termination;
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired, termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller for a breach of this contract, including any action for breach of warranty, or otherwise in connection with the goods sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract will be brought and tried in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 06/08