

**ANDRITZ SEPARATION INC. ADDENDUM TO CITY AND COUNTY OF CARSON CITY'S
CONTRACT NO. 1112-184, CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**

- Art. 5 CONSIDERATION: The ANDRITZ price did not include any state or local sales or use taxes. Add the following as 5.6:
5.6 CONTRACTOR'S prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products shall be billed to and paid by CITY unless CITY provides to CONTRACTOR a tax-exemption certificate acceptable to the relevant taxing authorities.
- Art. 8 REMEDIES, 8.1 ANDRITZ requires that their total aggregate liability not exceed the total cost of the purchase order and an exclusion of consequential damages. Replace the existing 8.1 with the following:
8.1 The remedies of CITY set forth herein are exclusive and the aggregate liability of CONTRACTOR for all claims of any kind for any loss or damage resulting from, arising out of or connected with this agreement or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any product, shall in no event exceed the contract price. In no event shall CONTRACTOR be liable to CITY or any party for special, incidental or consequential damages, loss of profits or revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining replacement power. The limitations and exclusions of liability set forth in this paragraph shall apply to any claim, whether based on contract, warranty, or otherwise, exclusive only of CONTRACTOR'S liability for gross negligence and indemnification of third party claims for personal injury or tangible property damage. For the purposes of this Paragraph 8.1, "gross negligence" shall mean the failure to perform or duty in such reckless or wanton disregard for the consequences of safety of persons or property so as to justify an inference of willful misconduct. All liability of CONTRACTOR to CITY, arising out of this agreement, shall terminate at the expiration of three years after final acceptance. The provisions of this paragraph shall supersede any inconsistent provisions in any instrument forming part of this agreement.
- Art. 9 LIMITED LIABILITY: Strike the last sentence in 9.1, conflicts with 8.1.
- Art. 13. INSURANCE REQUIRMENT, Art. 14. COMMERCIAL GENERAL LIABILITY, Art. 15. BUSINESS AUTOMOBILE LIABILITY INSURANCE, Art. 16. PROFESSIONAL LIABILITY INSURANCE AND Art. 17. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITIES INSURANCE: ANDRITZ is an equipment manufacturer/supplier, not a General Contractor. All work for this project will be conducted in the ANDRITZ work shop, not on-site. The only on-site requirement is that of a supervisory capacity during installation and training. Replace Articles 13 through 17 with the following ANDRITZ insurance clause:
13.1 CONTRACTOR shall maintain commercial general liability insurance with limits of not less than \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Work. CONTRACTOR shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Work will be performed, and owned and non-owned auto liability insurance with limits of not less than \$1,000,000 combined single limit. CITY shall be designated as an additional insured under CONTRACTOR'S commercial general liability insurance and auto liability insurance coverages, and CONTRACTOR will provide a Certificate of Insurance certifying the existence of such coverages upon request.
- Art. 23. CITY OWNERSHIP OF PROPRIETARY INFORMATION: ANDRITZ grants licenses, but not ownership of its designs. Replace existing 23.1 with the following:
23.1 Any intellectual property created as a result of this Order, including without limitation, creative materials, reports, documents, computer software, improvements, inventions or other work product ("Intellectual Property"), whether patentable, copyrightable or not, shall be CONTRACTOR'S sole and exclusive property. In addition, CITY acknowledges that the Goods and/or Services may include and/or incorporate pre-existing intellectual property owned by CONTRACTOR ("Contractor's Materials"). Ownership of such Contractor's Materials shall remain at all times with CONTRACTOR, provided however that CONTRACTOR hereby grants CITY a perpetual, non-exclusive, non-transferable, fully paid-up, royalty-free, license to use Contractor's Materials in connection with the CITY-owned portion of the Goods and/or Services for its intended purpose at the CITY facility for which such Goods and/or Services were originally purchased under this Order.

Art. 26 FEDERAL FUNDING, 26.2: ANDRITZ is an equal employment opportunity employer, but does not operate under a formal Affirmative Action Plan; therefore ANDRITZ must take exception to any requirement for an Affirmative Action Plan and indemnifying Owner from costs and expenses relating to such a requirement.

Art. 28 GENERAL WARRANTY: ANDRITZ can not accept Implied Warranties and remedies beyond repair or replace. Replace the entire 28.1 with the following:

- (a) CONTRACTOR warrants to CITY that the Products will be delivered free from defects in material and workmanship, and fit per the purpose as defined in the specification. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 24 months from initial operation of the Products and 30 months from delivery thereof (the "Warranty Period"). If during the Warranty Period CITY discovers a defect in material or workmanship and gives CONTRACTOR written notice thereof within 10 days of such discovery, CONTRACTOR will, at its option, either deliver to CITY a replacement part or repair the defect in place. CONTRACTOR will have no warranty obligations under this paragraph (a): (i) if CITY fails to ensure that the Products are operated and maintained in accordance with generally approved industry practice and with CONTRACTOR'S specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if CITY fails to give CONTRACTOR such written 10 day notice; (iv) if the Products are repaired by someone other than CONTRACTOR (without CONTRACTOR'S written approval) or have been intentionally or accidentally damaged, or (v) corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable.
- (b) CONTRACTOR further warrants to CITY that at delivery, the Products will be free of any liens or encumbrances. If there are any such liens or encumbrances, CONTRACTOR will cause them to be discharged promptly after notification from CITY of their existence.
- (c) THE EXPRESS WARRANTIES CONTRACTOR MAKES IN THIS PARAGRAPH 24 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (d) The remedies provided in paragraphs (a) and (b) are CITY'S exclusive remedy for breach of warranty.

Please acknowledge acceptance of the above changes by signing and returning to ANDRITZ Separation Inc., via email or fax. The signed document will be attached and returned with the signed Contract For Services.

Accepted By: **ANDRITZ Separation Inc.**

City of Carson City

Signature

Signature

Title

Title

Date

Date