

City of Caney

Special City Council Meeting

July 26th, 2023 at 6:00 p.m.



Call Meeting to Order: Mayor Joshua Elliott

Roll Call

Valerie Hurd

Lori Patterson

Kenith Butts

Nathan Rains

Zachary Ellison

Debbie Wood

Aaron Elliott

Addie Traxson

Pledge of Allegiance: Mayor Joshua Elliott

Invocation: Mayor Joshua Elliott

New Council Business

A. Request to approve the purchase of the MF System Module Replacement in the amount of \$121,073.79 using ARPA Funds

Presented by Kelley Zellner, City Administrator

Recommended Action: _____ make a motion to approve the purchase of the MF System Module Replacement in the amount of \$121,073.79 using ARPA Funds.

_____ seconded the motion. Motion Carries: _____

Adjournment

_____ Moved to adjourn the meeting at _____.

_____ Seconded Motion. Motion Carries: _____.



Attn: City of Caney – Mr.Kelley Zellner - Cityadmin@caney.kscoxmail.com

Re: Module Replacement

Scope of Services

Technical Scope of Supply - MF System Module Replacement

Pall Water is pleased to propose providing labor and materials described below for replacing 20 Microfiltration Modules on one filtration rack on the City of Caney water filtration system, for a total of 20 modules.

Item 1 - Modules and associated items: Pall will provide the following materials for module replacement:

- 20 ea Pall Water Microfiltration modules
- 2 Qt. Lubricant for module nuts
- 40 ea Module nuts
- 42 ea Module O-rings
- 1 ea XR Gaskets
- 1 ea XR Nuts
- 20 ea Clear couplings
- 20 ea Upper end caps
- 20 ea Lower end caps
- 1 each module wrenches
- 1 each torque wrenches
- 1 each clear coupling wrenches
- 22 each XR hoses
- 21 each 1.0-inch clamps
- 21 each 2.0-inch clamps

Item 2 - Installation Supervision: Pall will provide a qualified Field Service Engineer (FSE) to supervise and assist with removing the old modules and installing the new modules. This module replacement project will require an additional crew of 1 person for 1.5 days in addition to the Pall FSE complete. Additional labor crew is by others (see Item 3 below if Pall is to provide the labor crew).

Overall, Pall expects this work to take up to 2.5 days to complete, including set up and first rack CIP at the beginning and clean up at the end. As part of this work, Pall will also provide a new Operating Protocol, and update the system Process & Instrumentation Diagram (P&ID) drawing. The Operating Protocol is a document created by Pall's Process Engineers based on a review of your MF system together with incoming water quality*, and includes recommended settings and protocols for Flux Maintenance (FM), Enhanced Flux Maintenance (EFM) and Clean-In-Place (CIP) operations. The OP is designed to give operators the information and guidance to achieve optimal system performance results. Potential benefits from following Pall's Operating Protocols include improved cleanings, increased up time, and extended service life.

Copies of both the P&ID and the Operating Protocol will be provided shortly after completion of the installation work.

*Incoming water quality data is provided by the customer. Pall can provide the comprehensive water quality analysis needed for the Operating Protocol at additional cost.

Item 3 - Installation Labor: In addition to the FSE working as supervisor, Pall will provide installation labor to install modules by sending a crew of 2 people for 1.5 days in addition to the Pall FSE complete. The crew will work 10 hour days to complete the installation in a timely manner.



Change-Out Plan and Schedule

The Pall Field Service Engineer will arrive at the site a full day before the start of the module removal process to meet with site personnel, review the site where the work will be performed, initiate and complete a CIP on the first rack to be changed, and make preparations for the module change-out process. For safety, a clean-in-place (CIP) procedure will be performed on each rack prior to commencing module removal. At the conclusion of the CIP process the rack will be shut down and drained. The CIP will require one full day per rack to complete.

Once full drainage of the cleaned rack has been verified the old modules will be removed and the new ones installed. The old modules will be set aside for disposal. The new modules will need to be drained of preservative prior to installation on the module rack. Pall will provide a Material Safety Data Sheet for the module preservative upon receipt of order. Disposal of old modules and module preservative is by others.

Once the full set of modules is installed on the rack, the rack will then be filled and rinsed in place to ensure all preservative has been removed from the modules. The FSE will then verify the operating set points, oversee the start-up of the rack, and verify proper operation.

Freight charges are not included.

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.

Total amount for purchase order: **\$121,073.79**
Currency: USD

* Modules are subject to availability at receipt of PO. Delivery to be confirmed at time of order confirmation.

Service Reports: If service reports are required by your site to comply with your company or state regulations, please indicate on your order that service report documents are required. Service reports detailing the visit and recommendations will then be provided.

Materials: This proposal covers parts and services.

Module Recycling: Pall Water has invested in a process to recycle modules for short-term and/or less critical applications. If your modules qualify for recycling, Pall Water will take possession of them after removal saving the costs associated with module disposal. To determine if your modules qualify for recycling please complete the attached "Module History" questionnaire and return it to Pall Water for evaluation. Pall Water may request a module for further evaluation based to determine suitability for recycling following review of the information provided.

Validity: This proposal is for 30 days. If a purchase order is not agreed upon by Seller and Buyer within the price validity period, the pricing set forth in this proposal shall not apply.

Module Availability: We are currently experiencing a shortage of modules due to the high global demand for PVDF (the raw material used to manufacture modules). Modules have been allocated for this proposal for the validity period stated above. We cannot guarantee module availability beyond this time. A contract must be executed with agreed upon T&C's to secure the module supply.



Payment Terms and Milestones: Net 30 days

Terms of Sale: Standard Terms and Conditions of Sale Non-Systems - The Americas

Terms of Service:

- Regular minimum service charge is for a 10-hour day.

Module Warranty: The modules are warranted for defects in material and workmanship for a period of 12 months from the date of delivery. Where Pall Water provides installation and/or installation supervision as part of the replacement module order, the modules carry an extended warranty of one year absolute and 9 years pro-rated. The module warranty is subject to the Pall Water Warranty Submittal (attached).

Service Order acceptance and payment terms: Pall Advanced Separations Systems requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order. Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

Changes: Pall shall not implement any changes in the scope of services described in Pall's proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall's Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

For US / Mexico / Latin American Customers	For Canadian Based Customers
<p>Pall Corporation P.O. Box 5630 839 State Route 13 Cortland, New York 13045-5630 Tel: 866-475-0115 / Fax: 607.758.4526 Email: Pall_Technology_csc@pall.com Attn: Customer Service</p>	<p>Pall Canada ULC Ltd3450 Ridgeway Drive, Unit 6 Mississauga, ON. L5L-0A2 Phone: (905) 542-0330 Fax: (905) 5420331 Email: pall_technology_csc@pall.com</p>

Pall Systems Support

To obtain support for your Pall systems installation, our Customers can contact Pall via our toll free number at 866-475-0115 or by email to pall_technology_csc@pall.com. Through this channel, you gain access to warranty assistance, technical support as well as our service and spares team.

Pall Customers have access to this 24/7 Service Hotline. Pall System Engineers are on full-time rotation to provide around-the-clock availability of live technical support. This service is charged at \$300? for support



time for the first 30 minutes, during normal workday hours between 9:00-AM and 4:00-PM EST, excluding weekends and holidays.

If your system is out of warranty or does not have a 24/7 service support contract, there will be a charge when technical support is to be provided for intervals longer than 30 minutes, or after-hours technical support to resolve the issue. Extensive off-site support will require a purchase order or credit card. Billing is based on a minimum 1-hour charge at Pall’s off-site hourly service rate. You will be asked to provide your credit card number or service contract purchase order number that will be billed at Pall’s Off-Site Service Rates, with a minimum 1-hour charge. If the problem cannot be resolved over the telephone, the Customer can request a Pall System Service Representative to visit the site location. You will be quoted an Emergency Service Rate and billed for last-minute travel expenses.

Please feel free to call me at your convenience with any questions or comments. We look forward to providing you with field services to assist you with system operation and await your purchase order.

Sincerely,
Michelle Mullen - on behalf of,
Alex Braman
Regional Sales Manager
Cell: 720-202-6536
E-mail: alexander_braman@pall.com

Customer Authorization for Service

I am an authorized representative of the customer, and I accept the Terms and Conditions of this Service Agreement on behalf of the customer. I authorize Pall Corporation to perform the work defined in this agreement, and accept the costs and charges defined in this agreement.

Company: _____

Print Name

Title/Position

Signature

Date

Purchase Order No. or Reference for Billing: _____

Requested Date(s) to Schedule Service Visit(s): _____
(unless deemed emergency service, please allow a minimum 4-week window to accommodate scheduling by Pall.)

Effective Date and Duration: This Agreement will be effective as of the date signed below, and will remain in effect:

- until on site service work has been completed by Pall,
- or until 30 days after receipt of notice of termination by either party.

Customer Billing Address: _____



Customer Comments:

**Standard Terms and Conditions of Sale
Non-Systems – The Americas
Pall Water**

1. Applicability: Entire Agreement:

1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.

1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. Non-delivery:

2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.

2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. Delivery:

3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate

possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.

3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.

3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. Shipping Terms: Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.

5. Title and Risk of Loss: Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. Inspection and Rejection of Nonconforming Goods:

6.1 Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.

6.2 If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming

Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.

6.3 Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

6.4 If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

7. Services: Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

8. Purchase Price: The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue of a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

9. Taxes: The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

10. Payment:

10.1 Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.

10.2 Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms

or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally, Seller may require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

10.3 All sales are subject to the approval of Seller's credit department. Seller and Buyer both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new bank or mailing instructions by calling Seller and speaking with Seller's accounts receivable contact before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute any mailing or bank transfer instruction changes or require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

10.4 Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10.5 Notwithstanding anything herein to the contrary, this Agreement may be modified or terminated/cancelled, and scheduled shipments hereunder may be deferred or changed, only: (i) upon Buyer's prior written notice to Seller, and Seller's written acknowledgment of the notice; and (ii) upon terms satisfactory to Seller. Buyer shall pay to Seller all fees, charges and/or costs that Seller assesses because of any modification, termination/cancellation, deferment and/or change, including without limitation all termination/cancellation fees, restocking fees, storage fees, insurance costs, freight costs, nonrecurring engineering or production costs and recovery of cost plus reasonable profit required in the event of Buyer's termination without cause.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. 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 Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller 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 (this “**Limited Warranty for Services**”); this Limited Warranty for Services shall survive for 30 days following Seller’s completion of the Services (the “**Service Warranty Period**”). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller’s liability under any service warranty is limited (in Seller’s sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 No Warranty as to Third Party Products. Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in **Section 11.1**. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer’s warranty statement.

11.4 Other Limits. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller. 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 Seller 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.

11.5 Exclusive Obligation. THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.

11.6 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. Limitation of Liability:

12.1 IN NO EVENT SHALL SELLER 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 BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, 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 GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.

12.2 IN NO EVENT SHALL SELLER'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 SELLER FOR THE GOODS SOLD HEREUNDER

12.3 The limitation of liability set forth in **Section 12.2** above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

13 Cancellation: Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.

14 Termination: In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15 Changes: Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.

16 Intellectual Property Infringement: Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which



incorporate or integrate the Goods.

17 Ownership of Materials: All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

18. Export: As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "**Authorizations**") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.

19. Confidentiality: If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "**Confidentiality Agreement**"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.

20. No Waiver: No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.

21. Force Majeure: Under no circumstances shall Pall have any liability for any breach relating to nonperformance or underperformance caused by extreme weather, natural disaster, fire, accident or other act of God; strike, lock out or other labor shortage or disturbance; lock down, boycott, embargo or tariff; terrorism or act of terrorism, war or war condition or civil disturbance or riot; failure of public or private telecommunications networks; delay of carriers or other industrial, agricultural or transportation disturbance; failure of normal sources of supply; epidemics, pandemics, contagion, disease or quarantine; law, regulation or any act of government; or any other cause beyond Pall's reasonable

control. Pall's performance shall be excused and deemed suspended during the continuation of such event or events and, for a reasonable time thereafter, delayed or adjusted accordingly.

22. No Third-Party Beneficiaries: This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Relationship of the Parties: The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. Validity: If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. Governing Law: This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C. 13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.

26. Submission to Jurisdiction: Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.

27. No Jury Trial: BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

28. Survival: All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions, together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.

29. Amendment and Modification: This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

30. Equivalent Components: Any product or part that is specified in this proposal to be provided

by Pall can be substituted by Pall, at Pall's discretion, for another product or part that is reasonably equivalent in form, fit and function. Pall will provide as much notice as practicable for any decision to use an equivalent part, together with information setting forth such reasonable equivalency, including after the approvals of the First and Second Submittals (in which case, Pall will update such Submittals reflecting the equivalent product or part and will resubmit for information).

31. Drawing Disclosure: All drawings and documents included or provided with this proposal are for reference and informational purposes only and shall not be relied upon or used in any way for any construction or engineering drawings and documents that are not part of Pall's scope.

32. Pall Water is part of Danaher Corp.'s Environmental & Applied Solutions ("EAS") segment. Danaher Corp. has announced its intention to separate its EAS segment to create an independent, publicly traded company (the "Transaction") (see: [Danaher Announces Intention to Separate Environmental & Applied Solutions Segment to Create an Independent, Publicly Traded Company - Sep 14, 2022](#)). In connection with the Transaction, the Pall Water assets, including this contract, will be assigned, and transferred to Trojan Technologies Corp. or an affiliate thereof (the "Assignment"). Buyer hereby consents to the Transaction and the Assignment of this contract to Trojan Technologies Corp. or an affiliate thereof. Upon assignment of this contract, Trojan Technologies Corp. or an affiliate thereof will have all rights, and be liable for all obligations and responsibilities, under this contract as if the original seller.