

**TOWN OF SILT
RESOLUTION NO. 29
SERIES OF 2023**

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SILT, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ACTIVITY ENTERPRISE, AUTHORIZING THE TOWN TO EXECUTE A CONTRACT AMENDMENT FOR THE PURCHASE BY GARNEY COMPANIES, INC. OF MATERIALS AND ITEMS REQUIRED FOR THE CONSTRUCTION OF THE WATER TREATMENT PLANT AND DIRECTING THE TOWN TO SEQUESTER FUNDS

WHEREAS, the Town of Silt (the "Town"), has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, the Board of Trustees of the Town (the "Board") is the governing body of the Town and is acting herein on behalf of the Town's Water and Wastewater Activity Enterprise (the "Enterprise"); and

WHEREAS, the Town has approved funding from the Colorado Water Resources and Power Development Authority (the "CWRPDA") for water utility improvements; and

WHEREAS, in June 2023 the Town entered into an Agreement Between Owner and Contractor for Construction Contract with Garney Companies, Inc. ("Garney"); and

WHEREAS, the Contractor, Garney Companies, Inc. ("Garney"), identified critical path materials and items to procure for the construction of the WTP that may take up to eighteen months for their procurement and that need to be ordered early to adhere to Contractor's construction schedule (the "Pre-Procurement Items").

WHEREAS, the Contractor's estimate for a Change Order Request for the purchase of the Pre-Procurement Items is priced at up to \$5,925,062.82, and is attached hereto as **Exhibit A**.

WHEREAS, the Owner desires to acquire such materials and items, as listed in **Exhibit A**, prior to initiation of construction;

WHEREAS, the Owner shall receive funding from the Colorado Water Resources and Power Development Authority (the "CWRPDA") for water utility improvements in the form of Loans as approved by Ordinance No. 6, Series of 2023, second reading on October 10, 2023;

WHEREAS, the funding from the CWRPDA shall be available beginning in December 2023; and

WHEREAS, in order to not create an indebtedness to the Town, the Town shall sequester \$5,925,062.82 to cover the cost of the Pre-Procurement Items identified in **Exhibit A**, by and through sequestering \$1,000,000 from the Town of Silt's Water and Wastewater Enterprise reserve funds and sequesters up to \$4,925,062.82 from the Town's General Fund (the "Sequestered Funds") in order to cover the cost of the Pre-Procurement Items until such time as the Town secures the funding from the CWRPDA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SILT, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ACTIVITY ENTERPRISE, THAT:

Section 1. Sequesters Funds. The Board hereby sequesters the Sequestered Funds, made up of \$1,000,000 from the Town of Silt's Water and Wastewater Enterprise reserve funds and \$4,925,062.82 from the Town's General Fund until the Town secures the funding from the CWRPDA, at which point the Sequestered Funds shall be released upon the availability of the CWRPDA loans.

Section 2. The Board hereby authorizes the Town to enter into a First Amendment to the Agreement between the Town of Silt and Garney Companies Procurement of the Pre-Procurement Items as identified in **Exhibit A**.

Section 3. This Resolution shall take effect immediately upon its passage.

INTRODUCED, READ AND APPROVED at a regular meeting of the Board of Trustees of the Town of Silt, Colorado held on the 10th day of October, 2023.

ATTEST:

TOWN OF SILT, ACTING BY AND THROUGH THE ENTERPRISE


Town Clerk Sheila M. McIntyre, CMC


Mayor Keith B. Richel



FIRST AMENDMENT TO AGREEMENT BETWEEN TOWN OF SILT AND GARNEY COMPANIES FOR THE PROCUREMENT OF MATERIALS FOR THE WATER TREATMENT PLANT

THIS FIRST AMENDMENT FOR THE PROCUREMENT OF MATERIALS FOR THE WATER TREATMENT PLANT (the "First Amendment") is made and entered into on the date upon which it is mutually executed by the Parties (the "Effective Date"), by and between the Town Silt (the "Owner"), and Garney Companies, Inc., ("Contractor"). Owner and Contractor may be termed individually the "Party" and collectively the "Parties".

WITNESSETH:

WHEREAS, Owner and Contractor entered into that Agreement Between Owner and Contractor for Construction Contract (Cost-Plus-Fee), as executed on June 7, 2023, for Phase I Preconstruction Services for the construction of the Silt Water Treatment Plant (the "Agreement").

WHEREAS, the Agreement provides that Phase I for preconstruction services encompasses constructability reviews, value engineering, estimating, and scheduling activities to reach a guaranteed maximum price for the design of the Water Treatment Plant ("WTP").

WHEREAS, construction plans for water utility improvements have been developed which identify critical path materials that need to be acquired.

WHEREAS, the Owner desires to acquire such materials prior to initiation of construction consistent with available funding.

WHEREAS, The Owner is scheduled to receive funding from the Colorado Water Resources and Power Development Authority (the "CWRPDA") for water utility improvements in December 2023, in the form of Loans as approved by Ordinance No. 6, Series of 2023, on October 10, 2023.

WHEREAS, The funding from the CWRPDA shall be available beginning in December 2023. If the funding from CWRPDA is not approved, the provisions of Section 1.04 Termination of Purchase shall be implemented.

WHEREAS, the Contractor identified critical path materials and items to procure for the construction of the WTP that may take up to eighteen months for their procurement and that need to be ordered expeditiously to adhere to Contractor's construction schedule (the "Pre-Procurement Items"). The Contractor's estimate for a Change Order Request for the purchase of the Pre-Procurement Items is valued at up to \$5,866,402.00, which items and costs are attached hereto as

Exhibit B.

WHEREAS, pursuant to Resolution No. 27, Series of 2023, the Owner, by and through its Board of Trustees and acting on behalf of its Water and Wastewater Activity Enterprise, authorized the Town of Silt to negotiate the purchase of the Pre-Procurement Items with Contractor.

NOW, THEREFORE, it is agreed by and between the Town and the Contractor that the Agreement shall be amended as follows:

Section 1.01 Recitals. foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.

Section 1.02 Original Terms and Conditions. Except as amended herein, the original terms and conditions of the Agreement remain in full force and effect.

Section 1.03 Scope of Work. The Original Agreement is hereby amended to include procurement services for the Contractor to purchase the items specifically set forth in **Exhibit A**. Contractor shall proceed with the order and purchase of the items listed therein.

Section 1.04 Termination of Purchase. Contractor agrees that all purchase contracts, orders, or invoices for the acquisition of the Pre-Procurement Items shall contain a provision that either the Owner or Contractor may cancel or void the purchase of each item, as allowed by the Agreement, as set forth in the Standard General Conditions of the Construction Contract, Section 16.03, which only obligate the Owner to pay for the work performed or materials used on a pro-rata basis and shall allow for the termination of the Pre-Procurement Items to the fullest extent permitted.

Section 1.05 Contractor Fee. The Bond amount of 1.25% and the Contractor Fee of 10.50% shall only be paid to the extent the Contractor has incurred cost for procurement of materials prior to cancelation. The Fees shall not be paid on portions of the contracts that are cancelled or not secured.

Section 1.06 Force and Effect of Amendment. Notwithstanding anything in the Original Agreement to the contrary, the Original Agreement shall be amended such that all references in the Original Agreement to "Agreement" shall refer to the Original Agreement as amended by this First Amendment.

Section 1.07 Conflict. This First Amendment is and shall be construed as part of the Original Agreement. In case of any inconsistency between this First Amendment and the Original Agreement, the provisions containing such inconsistency shall be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this First Amendment shall control.

Section 1.08 Counterparts; Facsimile or Electronic Signature; Authority. The Parties hereto agree that this First Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The Parties further agree that this

First Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the Party providing such signature as if it were the Party's original signature.

IN WITNESS WHEREOF, the Parties hereto have caused this FIRST AMENDMENT TO AGREEMENT BETWEEN TOWN OF SILT AND GARNEY COMPANIES FOR THE PURCHASE OPTION AGREEMENT FOR WATER TREATMENT PLANT to be effective as of the date of mutual execution by the Parties. By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this First Amendment.

~Signatures and Acknowledgments Follow~

	CONTRACTOR	Owner
By:	_____	_____
Title:	_____	_____
Date:	_____	_____



ADVANCING WATER

PROJECT:	SILT WATER TREATMENT PLANT IMPROVEMENTS	PROJECT NUMBER	6467
OWNER:	TOWN OF SILT		
CONTRACTOR:	GARNEY CONSTRUCTION	CO NUMBER	Phase 1A
PM:			
TITLE:			

Description: This amendment is for the early procurement of submittals, products, and equipment with long lead times to shorten the construction schedule and avoid delays once construction has begun

Item #	Specification	Description	Extended Cost
01	13 34 19	Metal Building Systems	\$ 1,369,264.00
02	26 24 19	Motor Control Centers	\$ 460,000.00
03	26 29 23	Variable Frequency Drives	Incl Above
04	26 32 13	Diesel Engine Driven Generator	\$ 481,332.00
05	26 36 23	Automatic Transfer Switches	Incl Above
06	43 21 29	Centifugal Pumps (Flygt)	\$ 287,052.29
07	43 41 45	Fiberglass Reinforced Tanks (Palmer)	\$ 44,500.00
08	43 41 48	Crosslinked Polyethylene Plastic Tank (Assmann)	\$ 48,700.00
09	46 31 33	Chlorine Dioxide Generator (Pureline)	\$ 115,143.00
10	46 33 33	Polymer Blending Equipment (Velodyne)	\$ 135,481.00
11	46 43 66	Balasted High Rate Clarifier(Actiflo)	\$ 1,395,298.00
12	46 61 23	Filter Units (Filter Tech)	\$ 671,000.00
13	46 66 00	Uv Equipment (Trojan)	\$ 177,400.00
14		Contacts and Submittals	\$ 58,248.14
Subtotal			\$ 5,243,418.43
Bond and Insurance Cost			1.25% \$ 65,542.73
Contractor Fee			10.50% \$ 557,440.92
Total Amendment Cost			\$ 5,866,402.08
Contract Price prior to this Contract Amendment:			\$ 199,416.00
Contract Price incorporating this Amendment:			\$ 6,065,819.00

Contractor: Garney Construction
Date: October 10, 2023

By _____

By _____
Date

By _____
Date

Approved for Payment by

Approved for Payment by

By _____

By _____