



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Materials and Services Agreement between Atlas Copco Compressors LLC, and  
Water Environment Services  
for the Tri-City Water Resource Recovery Facilities Process Air Blower Systems

<b>Purpose/Outcomes</b>	Enact section I. A. paragraph 3. (“Service Plan”) of the settlement agreement (Board Order # 091516 V1.1&2) between Atlas Copco Compressors LLC and the Districts to provide a 10 year full service and warranty plan for the Process Air Blower Systems.
<b>Dollar Amount and Fiscal Impact</b>	Funding is available in the FY2017-18 budget and will carry over through FY2028-29 budget years. The agreement is for an amount not to exceed \$50,000 per year over a 10 year period in accordance with the 2016 settlement agreement, with a total amount not to exceed of \$500,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 & WES Operating Funds. No General Funds impacted.
<b>Duration</b>	Ten years
<b>Previous Board Action/Review</b>	Approval of Settlement Agreement 091516 V1. 1&2
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth.</li> <li>2. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers.</li> </ol>
<b>Contact Person</b>	Randy Rosane, PE, Project Manager WES, 503-742-4573
<b>Contract No.</b>	N/A

**BACKGROUND:**

The HSI HT-Series Turbo blowers provided as part of the Tri-City Water Pollution Control Plant Phase I Expansion were installed in April 2011 to serve the existing conventional activated sludge (“CAS”) treatment system for the Tri-City Service District (“TCSD”) and a new membrane bioreactor (“MBR”) treatment system constructed by Clackamas County Service District No.1 (“CCSD#1”). These critical pieces of equipment move large volumes of air into the treatment process and are essential for plant operations.

The Turbo blowers were chosen because of their high energy efficiency ratings. However, the blowers experienced significant problems immediately upon installation, and failed to perform as advertised.

Atlas Copco Compressors, LLC met with WES and CCSD#1 and informed them that Atlas Copco Compressors LLC acquired HSI and that they were going to take responsibility for the acquired company's failures and replace all the blowers with reliable proven technology at no cost to WES and CCSD#1. In return the Districts would enter into a settlement agreement. The Districts accepted and the Board of County Commissioners approved and executed the settlement agreement on September 15, 2016.

In addition to the standard manufacturer's warranty, Atlas Copco Compressors, LLC offered a five year no-cost total responsible service agreement that provides for all the yearly preventative maintenance requirements, all part replacement and labor and or full blower replacement if needed. They also extended the offer to provide the services at a 50% discount or \$50,000/year, whichever is less, for a period of 10 years.

The operations and maintenance staff have requested the 10 year option citing their annual costs internally could meet or exceed the service agreement cost without the 10 year guarantee of parts labor and/or replacement.

This Agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the 10 year Materials and Service Agreement for an amount not to exceed \$50,000 per year, with a total amount not to exceed of \$500,000.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between Atlas Copco Compressors LLC (“Contractor”), and Clackamas County Service District No. 1 and Water Environment Services, both political subdivisions of the State of Oregon (collectively referred to as “District”) for the purposes of providing service/maintenance in support of the Atlas Copco blowers as agreed to in the Settlement Agreement approved by the Board of County Commissioners 9/15/2016 VI. 1 & 2.

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall expire on **June 30, 2028**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services. The Contractor reserves the right to not renew a service agreement after expiry of the term.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in Service Plan Quote #52311418, attached and hereby incorporated by reference as **Attachment “A.”** Contractor’s Service Agreement is attached as **Attachment “B”** and hereby incorporated by reference. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, and Attachments “A” and “B”. Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the standard of care prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: **Randy Rosane**, 503-742-5453.

### **III. COMPENSATION**

1. **PAYMENT.** The District agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$50,000.00** per fiscal year and total Contract Compensation shall not exceed \$500,000.00. Fiscal year is defined as July 1 to June 30.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the District’s Representative at: Water Environment Services, 150 Beaver Creek Road, Oregon City, OR 97045, or email: randyros@clackamas.us.

#### **IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**6. GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**7. HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property and injury to persons to the extent caused by the negligent act, omission, or neglect of Contractor, its subcontractors, agents, or employees in the performance of the Scope of Work. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all third party claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon physical damage or injuries to third persons or third party tangible property to the extent caused by the errors, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656. At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees as additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be

acceptable in lieu of “tail” coverage, provided its retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

**11. LIMITATION OF LIABILITIES.** Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. EXCEPT FOR INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER THIS CONTRACT, THE CUMULATIVE TOTAL LIABILITY OF CONTRACTOR ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS CONTRACT OR ANY SERVICES FURNISHED UNDER THIS CONTRACT SHALL NOT EXCEED THE LIMITATIONS OF THE CONTRACTOR’S INSURANCE POLICIES HELD DURING THE TERM OF THIS CONTRACT. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District’s supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. RESERVED.**

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

**A. Performance Warranty.** Contractor warrants that the goods provided to the District shall be free from defects in materials and workmanship.

**B. Service Warranty.** Contractor warrants that the services provided herein to the District, if any, will be performed in a good and workmanlike manner and in accordance with industry standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this services warranty shall be deemed a material breach of this Contract.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY OR OTHERWISE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to



terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this paragraph.

. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor, upon which the District is entitled to a refund for any services that haven't been performed but have already been paid for; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice. In the event the District opts to terminate this Contract within any given year, the remaining paid but not-yet-earned balance of that year shall be returned to the District.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to

Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity subject to the limitations in this Contract. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such

claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the Contract promptly following inspection, the District, at its sole discretion, may require Contractor to correct any defects without charge. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

**SIGNATURE PAGE FOLLOWS**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Atlas Copco Compressors LLC 22649 83 <sup>rd</sup> Ave. S.E. Kent, WA 98032	Clackamas County Service District No. 1 by:
_____	_____
Authorized Signature	Chair
_____	_____
Name / Title (Printed)	Recording Secretary
_____	_____
Date	Date
_____	Water Environment Services by:
206-939-2475	_____
Telephone/Fax Number	Chair
_____	_____
418306-96 FLLC / Delaware	Recording Secretary
Oregon Business Registry #	_____
_____	Date
_____	Approved as to Form:
_____	_____
_____	County Counsel
_____	_____
_____	Date

**ATTACHMENT A  
CONTRACTOR'S QUOTE, PROPOSAL #52311418**

Pages 1 through 16

**ATTACHMENT B  
TERMS AND CONDITIONS**

The following conditions apply to this Contract:

1. **Service.**

A. Contractor will provide the number of visits indicated in the quotation's Pricing and Service Summary (in the column entitled "Visits per Year") to carry out, on the specific compressor identified in the quotation, the activities specified in the quotation's Activities List for the specific compressor. The activities will be performed by Contractor in accordance with the compressor's instruction manual or as determined by the compressor's operating context. After each visit, an electronic service report will be provided by Contractor to the District. The service report will outline the service provided and any future recommended repairs. Repairs are not within the services supplied under this Contract, unless expressly set forth otherwise in this Contract. The service report must be signed by a District representative to verify the specified work has been completed.

B. This Contract specifies that the compressor is serviced under a "Total Responsibility" Plan, Contractor will provide all spare parts, consumables, labor, and travel deemed applicable by Contractor to perform the activities specified in the quotation's Activities List for each above-mentioned visit for the compressor. This Contract specifies that an Inspection Plan applies to the compressor, Contractor will provide all labor and travel deemed applicable by Contractor to perform the activities specified in the quotation's Activities List for each mentioned visit for the compressor.

C. This Contract specifies that the compressor is serviced under a Total Responsibility Plan, repair of unexpected compressor failure influencing the function of the compressor will be within the services supplied under this Contract at no extra charge for the costs of labor and the spare parts required to restore function of the compressor.

D. Contractor will contact the District with a minimum of twenty-four (24) hours' notice before any visit not involving a compressor emergency. All work will be performed during Contractor's normal working hours (8:00 am to 5:00 pm, Monday through Friday excluding public holidays), except to the extent Contractor and the District agree otherwise in writing. Irrespective of the foregoing, as this Contract specifies that the compressor is serviced under a Total Responsibility Plan, Contractor will, at no extra cost to the District, perform the mentioned breakdown service outside of Contractor's normal working hours, subject to availability of Contractor's service personnel.

2. **Limitations of Service Obligations.**

A. Contractor shall not be obligated to inspect or service any compressor under this Contract in the event of:

- (i) Any failures influencing the function of the compressor caused by unforeseen circumstances including, but not limited to, accidental or willful damage to the compressor by the District or a third party, failure of electric power for the compressor

(or interruption or fluctuations of electric power, or out-of-specification electric power), improper quality and/or quantity of air going into the compressor, introduced contamination, or improper repair, servicing, or alteration of the compressor by the District or a third party; or  
(ii) Operation outside of specified parameters.

B. Temporary hire of compressors/alternative air supply to cover compressor outages, in addition to any maintenance required to be performed on any of the temporary equipment, will be covered at Contractor's expense. In the event of an emergency failure, the District is authorized to hire alternative air supply at Contractor's expense, until the Contractor can respond to the emergency to make repairs.

3. **District Responsibilities.** District shall do all of the following:

A. Perform daily and weekly (eight (8) and forty (40) hour) inspection on the compressor in accordance with the compressor's instruction manual (including in the manual's preventative maintenance schedule).

B. Keep the compressor within the environmental conditions as outlined in "Operations and Maintenance Manual" (including but not limited to temperature range, humidity range, and other factors), and operate it as recommended in the compressor's instruction manual and in accordance with written recommendations (if any) of Contractor's service specialists. Contractor and District have identified an issue related to the temperature limit settings being too high and needing to be reduced for proper operation. Contractor will accordingly make changes to the Operations and Maintenance Manual to reflect these changes. Any terms of this Contract that are dependent on the temperature settings reflected in the Operations and Maintenance Manual shall not be enforceable by Contractor unless the update required above has been completed.

C. Ensure that water in the compressor's cooling circuits (if applicable) and ventilation is within the limits of quality, quantity and temperature as recommended in writing by Contractor.

D. Use only genuine Contractor Parts and Lubricants approved by Contractor.

E. Advise Contractor immediately of any changes identified during normal working hours of compressor operational conditions or site conditions and any malfunctions or failures that may influence the proper functioning of the compressor.

F. Provide Contractor with free and full access to the compressor, during previously agreed-upon times, to perform scheduled visits pursuant to this Contract. The District will, at its own cost, supply adequate lighting, power, and other facilities to which Contractor may reasonably need access to in connection with performing the service. If Contractor's service technician must wait more than one (1) hour under normal plant operating conditions beyond the start-time for a scheduled visit to access the compressor, then the Contractor may reschedule the visit for a later time or date.

G. If any forklift and/or other lifting or rigging equipment is necessary (as reasonably determined by Contractor) for Contractor to perform any activity under this Contract, the District shall supply such lifting/rigging equipment at the District's own cost together with sufficiently skilled and qualified labor in connection therewith.

H. Take the necessary action on compressor repairs recommended in writing by Contractor.

I. Make the compressor available for an overhaul of the compressor's element and/or main motor if shock pulse monitoring ("SPM") readings by Contractor or other metrics indicate the need for an overhaul.

4. **Software License.** Any and all software and source code and all revisions thereof embedded in or otherwise associated with any service or product furnished by Contractor (the "Software") is and shall remain the proprietary property of Contractor (and/or its licensors), and in no event will title thereto be sold or transferred to the District. Subject to the District complying with all terms and conditions of this Contract, Contractor grants to the District a non-revocable, non-exclusive, non-transferable license to use the Software solely in accordance with the use intended by Contractor. The District may not make copies, transfer, or export the Software unless expressly agreed in a written agreement signed by authorized representatives of Contractor and the District.
5. The breakdown provision in a Total Responsibility Plan includes labor, parts and travel for breakdown of components contained within the compressor frame and canopy over the term of the Contract.
6. District must make the compressor available for an overhaul if SPM readings or other metrics indicate the need for an overhaul.
7. Repairs or upgrades beyond the overhaul scope and outside of the Total Responsibility Plan will be invoiced separately as authorized by the District.
8. Alternative air supply is not covered by service plans unless emergency conditions require it.
9. Breakdowns and repairs caused by negligence, abuse, operation outside specified parameters are not covered by service plans.

Number of invoices per year:

Contract duration:

P.O. / Contract # \_\_\_\_\_

Expiry date \_\_\_\_\_

Pricing includes freight.

Pricing does not include any applicable taxes.

Quote Nr.: 52311