

## SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

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**ITEM NO:** A - 2

**DATE:** May 10, 2007

**SUBJECT:** Membrane BioReactor Procurement (MBR) -  
Rejection of Proposals  
Resolution 07-10 Declaration of Special Facilities  
Equipment

**CONTACT PERSON:** Public Works Director Dunn

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### **ISSUE:**

The issue before the City Council is to reject all proposals received in the March 15, 2007, call for proposals for membrane bioreactor procurement due to the exceptions taken to the terms, conditions and specifications. All proposals are recommended for rejection as a result of there being no uniform technologies to judge the submittals.

The City Council is asked to approve Resolution 07-10 waiving the requirements of competitive bidding for a contract of purchase of a membrane bioreactor system for the sultan waste water treatment plant upgrade project because the purchase involves special facilities or market conditions under RCW 39.04.280 (1)(b).

Approval of Resolution 07-10 will allow Sultan to forego competitive bidding and allow the City to negotiate with all responsive bidders to the March 15, 2007 call for proposals.

### **SUMMARY:**

The City of Sultan and Brown & Caldwell completed a request for proposal (RFP) process for the Procurement for MBR equipment desired for the Wastewater Treatment Plant (WWTP) 2009 upgrade. The Request for Proposals included a provision that potential bidders must take no exceptions and must agree with all terms, conditions and technical requirements as set out in the Request for Proposals;

On March 15, 2007 RFP's were published in the Daily Journal of Commerce and the Everett Herald. The potential bidders submitted numerous objections to the City's specifications. The City issued five (5) addenda to the terms and

specifications. As the proposals were submitted all suppliers included exceptions to the Request For Proposals (RFP) terms and specifications. The objections were either general or specific.

All proposals received took either general or a series of specific objections to the Request for Proposals and there was no fully and completely responsive bid. The lack of consist purposals indicates ther are no uniform set of terms, conditions, and specifications, which the City can issue to obtain multiple, responsive, competitive bids.

Therefore, the City of Sultan staff, city attorney and Brown and Caldwell Consulting firm request the City Council reject all proposals for the MBR received from the Suppliers.

The design of the WWTP upgrade membrane treatment is still the recommended treatment alternative. MBR systems use varying and differing technologies, which is an indicator MBR's are special facilities equipment as defined by state purchasing law and City's attempt to secure responsive bids demonstrates special market conditions.

Whereas it is critical to move forward with this essential public project to provide upgraded pollution equipment for the City's WWTP, City staff recommend the City Council authorize the Mayor to sign Resolution 07-10 pursuant to RCW 39.04.280 (1)(b) and waive competitive bidding requirements and authorize negotiations with all bidders submitting bids to the March 15, 2007 call for proposals.

**FISCAL IMPACT:**

The final fiscal impact at this time is unknown and will depend on the City and consultant's ability to negotiate a contract within the City's financial constraints.

The City Council is being requested, under separate cover (Agenda Item # A – 2), to approve a Consultant Agreement Amendment # 3 which includes increased costs in Task 101 Project Management and Task 520 MBR Equipment Procurement in the amount of \$37,930 for the extended duration of the MBR procurement process.

**RECOMMENDED ACTION:**

As City of Sultan Council reject all proposals received in the March 15, 2007 call for proposals due to the exceptions taken to the terms, conditions and specifications the City included in the MBR RFP's, which there is no uniform technologies to judge the submittals. Whereas it is critical to move forward with this essential public project to provide upgraded pollution equipment for Sultan's WWTP Council approves Resolution 07-10 authorizing negotiations for special facility equipment with MBR Supplier's.

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**COUNCIL ACTION:**

**DATE:** May 10, 2007

**ATTACHMENT(S):**

Resolution 07-10 Declaration of Special Facilities Equipment

## RESOLUTION NO. 07-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR A CONTRACT OF PURCHASE OF A MEMBRANE BIOREACTOR SYSTEM FOR THE SULTAN WASTE WATER TREATMENT PLANT UPGRADE PROJECT BECAUSE THE PURCHASE INVOLVES SPECIAL FACILITIES OR MARKET CONDITIONS UNDER RCW 39.04.280 (1)(b).

**WHEREAS**, on February 19, 2007 the City published a draft membrane bioreactor (hereinafter "MBR") request for proposals and delivered the same to four (4) known MBR suppliers;

**WHEREAS**, comments were received and the Request for Proposals was revised to address comments received and to arrive at terms and specifications that could be competitively bid;

**WHEREAS**, on March 15, 2007 a final Request for Proposals was published in the Daily Journal of Commerce and the Everett Herald, setting a bid submittal date of April 16, 2007;

**WHEREAS**, potential bidders submitted numerous objections to the City's specifications and the City issued five (5) addenda to the terms and specifications: Addendum 1 on March 29, 2007; Addendum 2 on April 4, 2007; Addendum 3 on April 10, 2007; Addendum 4 on April 16, 2007; and Addendum 5 on April 19, 2007;

**WHEREAS**, the various addenda sought to address potential bidder concerns to insure that responsive competitive bids could be received;

**WHEREAS**, the Request for Proposals included a provision that potential bidders must take no exceptions and must agree with all terms, conditions and technical requirements as set out in the Request for Proposals;

**WHEREAS**, all proposals received took either general or a series of specific objections to the Request for Proposals and there was no fully and completely responsive bid;

**WHEREAS**, the exceptions taken indicate that there is no uniform set of terms, conditions, and specifications which the City can issue to obtain multiple, responsive competitive bids;

**WHEREAS**, MBR systems use varying and differing technologies;

**WHEREAS**, MBR systems are special facilities and the City's attempt to secure responsive bids demonstrate special market conditions;

**WHEREAS**, it is critical to move forward with this essential public project to provide upgraded pollution equipment for the City's waste water treatment plant;

**NOW THEREFORE**, it is resolved by the City Council of the City of Sultan, Washington as follows:

Section 1 The City Council adopts as its factual findings those facts set out in the Recitals portion of this resolution. The MBR system is a pollution control facility, a special facility, and special market conditions exist preventing the receipt of multiple responsive competitive bids.

Section 2 Pursuant to RCW 39.04.280 (1)(b) the requirements of competitive bidding for this contract purchase are hereby waived. The City is hereby authorized to negotiate with all bidders submitting bids to the March 15, 2007 call for bids, to present to the Council for acceptance a contract for an MBR System that serves the best interests of the City.

**REGULARLY ADOPTED** by the City Council this 10<sup>th</sup> day of May, 2007

City of Sultan

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Benjamin Tolson, Mayor

ATTEST:

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Laura J. Koenig, City Clerk/Treasurer