

**CITY COUNCIL RESOLUTION NO. 2021-013**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF A CHANGE ORDER TO THE CONTRACT BETWEEN THE CITY AND SGS CONTRACTING SERVICES, INC., RELATING TO THE REPLACEMENT OF THE EXISTING GRIT SYSTEM AT THE ST. MARGARETS WASTEWATER TREATMENT FACILITY, EXTENDING THE PROJECT COMPLETION DATE AN ADDITIONAL THIRTY (30) DAYS, AT AN ADDITIONAL COST NOT-TO-EXCEED \$268,700.00.**

**WHEREAS**, the City of Lake City, Florida, (hereinafter the "City") pursuant to City Council Resolution No. 2020-111, entered into an Agreement with SGS Contracting Services, Inc., (hereinafter "SGS"), for aeration basin aerator replacements (six (6)) (hereinafter the "Project") at the St. Margarets Wastewater Treatment Facility (hereinafter "St. Margarets") for a contract price of \$1,471,700.00; and

**WHEREAS**, the Project engineer, City administration, and SGS recommend that additional work be performed at St. Margarets for the betterment of the Project, to wit: replacement of the existing grit system; and

**WHEREAS**, the Project engineer, City administration, and SGS anticipate the additional work to add costs to the Project totaling \$268,700.00 and thirty (30) days to the contract time agreed upon in the Agreement; and

**WHEREAS**, the City Council finds that it is in the City's best interests to enter into Change Order No. 1 to the Agreement, a copy of which is attached hereto, to memorialize the terms and conditions of the additional work.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are all true and accurate and are hereby made a part of this resolution.

**Section 2.** The City is hereby authorized to execute Change Order No. 1 with SGS, adding costs of \$268,700.00 and thirty (30) days to the Project and the Mayor is authorized to execute a formal Change Order No. 1 for and on behalf of the City to memorialize the changes to the Project.

**Section 3.** The City Manager and City Attorney are authorized to make such reasonable changes and modifications to the Change Order as may be deemed necessary to be in the best interest of the City and its citizens. Provided however, that any such changes or modifications shall not cause the payment to SGS Contracting Services, Inc., to exceed the amended Contract Price. The Mayor is authorized and directed to execute and deliver the Change Order in the name of, and on behalf of, the City with such changes, amendments, modifications, omissions, and additions made by the City Manager and City Attorney. Execution by the Mayor and SGS Contracting Services, Inc., shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

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**PASSED AND ADOPTED** at a meeting of the City Council this 16<sup>th</sup> day of  
February 2021.

**CITY OF LAKE CITY, FLORIDA**

By:  
Stephen M. Witt, Mayor

ATTEST

APPROVED AS TO FORM AND  
LEGALITY:

By:  
Audrey E. Sikes, City Clerk

By:  
Frederick L. Koberlein, Jr.,  
City Attorney

**CHANGE ORDER NO. 1**

Owner: City of Lake City, Florida  
 Engineer: Mittauer & Associates, Inc.  
 Contractor: SGS Contracting Services, Inc.  
 Project: SMWWTF Aeration Basin Aerator Repl.  
 Date Issued: January 29, 2021

Owner's Project No.:  
 Engineer's Project No.: 8904-16-1  
 Contractor's Project No.: 2020-08

**Effective Date of Change Order:** January 29, 2021

The Contract is modified as follows upon execution of this Change Order:

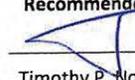
Description: Increase in contract price of \$268,700.00 for the replacement of the existing grit system at the SMWWTF.

Attachments: Contractor's proposal dated 12-16-2020.

Change in Contract Price	Change in Contract Times (Number of Days)
Original Contract Price: \$ <u>1,471,700.00</u>	Original Contract Times: Substantial Completion: <u>335</u> Ready for final payment: <u>365</u>
[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0 \$ <u>0</u>	[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0 Substantial Completion: <u>0</u> Ready for final payment: <u>0</u>
Contract Price prior to this Change Order: \$ <u>1,471,700.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>335</u> Ready for final payment: <u>365</u>
Increase [Decrease] this Change Order: \$ <u>268,700.00</u>	[Increase] [Decrease] this Change Order: Substantial Completion: <u>0</u> Ready for final payment: <u>0</u>
Contract Price incorporating this Change Order: \$ <u>1,740,400.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>335</u> Ready for final payment: <u>365</u>

**Recommended by Engineer (if required)**

**Approved by Funding Agency (if applicable)**

By:   
 Title: Timothy P. Norman, P.E.  
 Date: 1/29/21

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Authorized by Owner**

**Authorized by Contractor**

By: \_\_\_\_\_  
 Title: Stephen M. Witt, Mayor  
 Date: \_\_\_\_\_

  
 \_\_\_\_\_  
 Title: Seth Simmons, President  
 Date: 2/1/2021

Modified per Mittauer & Associates, Inc.

EJCDC® C-941, Change Order.

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**SGS CONTRACTING SERVICES, INC.**  
 PO BOX 908, HIGH SPRINGS, FL 32655  
 (386) 361-5300  
 www.sgscsi.com

## PROPOSAL

**DATE:** 12-16-2020  
**PROJECT:** Lake City St. Margerets Street WWTP Aeration Project  
**RE:** Proposal for Grit System Replacement

### SCOPE OF WORK

1	<b>SCOPE</b>				
2	Generally speaking, our scope of work includes the replacement of the existing grit system. This includes demolition of existing				
3	equipment and proper disposal. The new equipment will be installed in the existing structure and connected electrically using existing				
4	circuits and breakers. Additional new equipment to be installed includes grit classifier and pump. Includes grout for concrete cone.				
5					
6	This proposal assume that existing flow control gates are operational can sufficiently stop flow into the grit collection chamber.				
7					
8	<i>Equipment Scope of Supply Attached</i>				
9		<b>INCLUDED (Yes/No)</b>			
10	<b>DOCUMENTS</b>	Yes	No	N/A	Comments
11	Reference As-Builts	X			
12					
13	<b>GENERAL PROVISIONS</b>	Yes	No	N/A	Comments
14					
15	<b>SITWORK &amp; EARTHWORK</b>	Yes	No	N/A	Comments
16	Restore Work Area	Y			
17	<b>CONCRETE</b>	Yes	No	N/A	Comments
18	Demo as required	Y			
19	New concrete and grout for cones, equipment pads	Y			
20	<b>MISC. METALS</b>	Yes	No	N/A	Comments
21	Fasteners for Anchoring, SST	Y			
22	<b>PAINT &amp; COATINGS</b>	Yes	No	N/A	Comments
23	Coatings		N		
24	<b>PROCESS EQUIPMENT</b>	Yes	No	N/A	Comments
25	Grit Equipment, furnished and installed	Y			
26	<b>PROCESS PIPING</b>	Yes	No	N/A	Comments
27	Minor replacement of small diameter piping (local only)	Y			
28	Installation of Process Piping and appurtenances provided with Grit Equipment Scope	Y			
29	New Processing Piping, Valves, Fittings, Solenoids, Actuators (outside of work area)		N		
30	<b>ELECTRICAL</b>	Yes	No	N/A	Comments
31	Electrical Disconnection and Reconnection of New Equipment (Using Existing Conductors)	Y			
32	New Power Equipment: Control Panels, Disconnect (as shown in attached scope)	Y			
33	Controls, Integration, Fiberoptic, Etc.		N		
34	<b>MISCELLANEOUS</b>	Yes	No	N/A	Comments
35	Sanitary Facilities & Dumpsters	Y			
36	Linestops and/or Insert-Valves (if existing valves do not work properly)		N		
37	Bypassing of Flow (by any means requiring additional pipe and/or equipment by SGS)		N		
38	<b>SAFETY</b>	Yes	No	N/A	Comments
39	All PPE Normally Required for Projects of This Nature	Y			
40	<b>SCHEDULE</b>				
41	TBD				
42	<b>PAYMENT / TERMS / RELEASES</b>			N/A	Comments
43	Payment Terms Per Original Contract				



# SAINT MARGARATES WASTEWATER TREATMENT PLANT

## LAKE CITY, FL

### PREPARED FOR

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BIDDING CONTRACTORS

### AREA REPRESENTATIVE

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TSC Jacobs, North  
Paul Wachter  
paultscjn@verizon.net

### NOTE

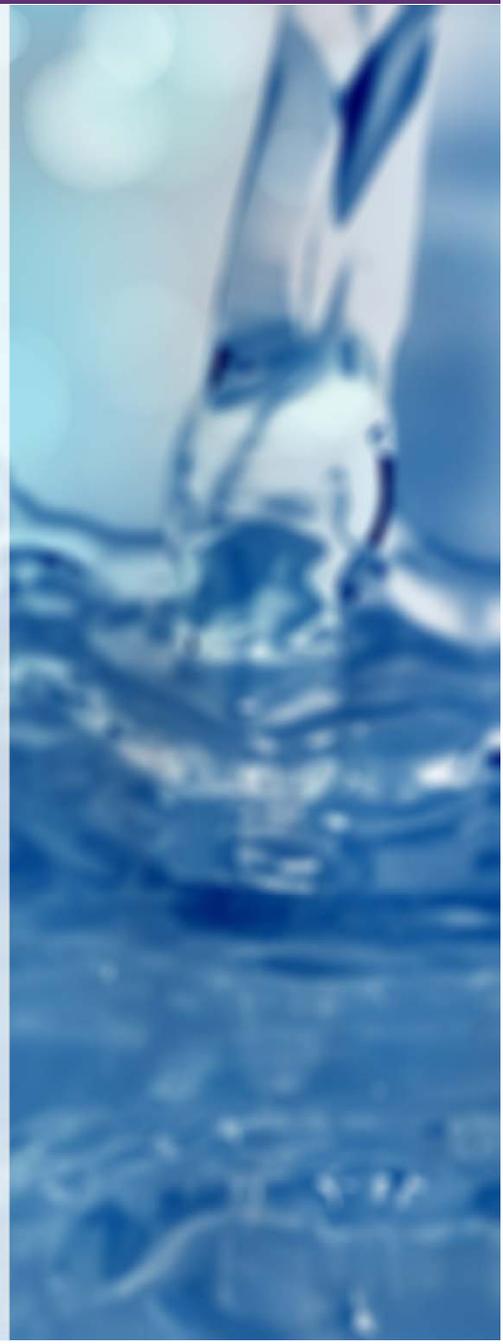
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No Addendums have been received at this time.

### PREPARED BY

Jared Holindrake  
Phone (801) 931-3000  
Fax (801) 931-3080  
Jared.Holindrake@ovivowater.com

Ovivo USA, LLC  
4246 Riverboat Road – Suite 300  
Salt Lake City, Utah 84123-2583



**DATE:** December 16, 2020

**TO:** Saint Mar WWTP  
Lake City, FL

**BID DATE:** February 2nd, 2020

Ovivo USA, LLC is pleased to submit a proposal for the following equipment (the “Products”) on the project indicated above (the “Project”). This proposal, either in its original form or in its “as sold” format, constitutes Ovivo’s contractual offer of goods and services in connection with the Project. Please contact Ovivo’s sales representative in your area for any questions or comments you may have in connection with this proposal. The address is:

TSC Jacobs, North  
24156 SR 54  
Suite 3  
Lutz, FL 33559

Attention: Paul Wachter  
Telephone: 813-242-2660  
Facsimile: 813-242-2597  
Email: paultscjn@verizon.net

**BID PRICING**

ITEM	EQUIPMENT	ESTIMATED SHIP DATE*	PRICE
I	Grit Removal System Equipment	*	\$ _____

## DELIVERY

\* Ovivo will submit drawings and other information for approval within **eight (8) weeks** after Purchaser's receipt of Ovivo's written acknowledgement of an approved purchase order. Ovivo intends to ship all Products **twenty-four (24) weeks** after receipt of approved submittals from Purchaser.

## GENERAL NOTES

The dates of drawing submission and shipment of the Products represents Ovivo's best estimate, but is not guaranteed, and Ovivo shall not be liable for any damages due to late delivery, including but not limited to liquidated damages. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in this proposal. If such delivery is prevented or postponed by reason of Force Majeure, as defined in Ovivo's standard terms and conditions of sale, Ovivo shall be entitled at its option to tender delivery to Purchaser at the point or points of manufacture, and in default of Purchaser's acceptance of delivery, to cause the Products to be stored at such a point or points of manufacture at Purchaser's expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this proposal. If shipment is postponed at request of Purchaser, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from Ovivo that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by Ovivo with respect to the Products shall be for the account of Purchaser and shall be paid by Purchaser when invoiced.

## ITEM I - GRIT REMOVAL SYSTEM EQUIPMENT

Ovivo USA (formerly EIMCO Water Technologies) proposes to supply one (1) Grit Removal System with Jeta Grit collector with Grit Pump, Grit Classifier, Cyclone and Control Panel. The design of the proposed mechanisms is based upon our standard engineering practices and details which will meet the intent of the Engineer's specifications.

### ITEMS INCLUDED:

- One (1) Jeta® Grit Collector, Model 300 (Type 270) to include:
  - 1.0 HP, 1800 RPM, TEFC helical gear motor suitable for 460/3/60 supply for Class I, Division 1, (XP) environments.
  - Standard spur gear driven head – heavy duty cast iron including air bell to prevent ingress of water into the gearbox.
  - 316/316L SS Fabricated material components listed below:
    - 10.75 inch O.D. drive tube
    - Flat disk impeller with adjustable blades
    - 3" diameter grit suction line running vertically down center of grit trap
    - Grit fluidizing line – 1 inch diameter running down center of grit trap
    - 1" SS solenoid valve.
    - Two (2) manual isolation ball valves for fluidizing line.
  - Freight, FCA to job site.
- One (1) Gorman Rupp (STD) T3 Self-Priming Grit Pump(s), to include:
  - Approx. 10 HP motor, 1800 RPM, mounted with V-Belt Base suitable for 460VAC/3ph/60Hz supply for Class I, Division 1 (XP) requirements.
  - Capacity of 100-150 GPM; designed, head to be determined by site piping/valving.
  - 3.0 inch inlet/3.0 inch outlet.
  - Casing – Grey Cast Iron No.30.
  - Removable cover plate – Grey Cast Iron No.30.
  - Replaceable wear plate – Steel No.1018.
  - Suction and discharge flanges – Grey Iron No. 30.
  - Freight, FCA to job site.
- One (1) Grit Classifier, Ovivo Model 50, to include:
  - One (1) HP, 1800 RPM, TEFC helical gear motor suitable for 460/3/60 supply for Class I, Division 1, (XP) environments.
  - Direct mounted top reducer bearing sized to handle screw loading without external bearings.
  - Classifier is approximately 12 ft. long.
  - SS Shaftless screw, no lower bearing required.
  - UHMW replaceable liners 3/8" thick for screw to ride on.
  - C.S. Painted screw: 6.5" in diameter by approximately 10' long.
  - 316/316L SS Fabricated material components listed below:
    - Inlet hopper with a single adjustable overflow weir and removable covers.
    - 2" plugged drain at base of classifier.
    - Support legs to hold classifier at approximately 20 degrees from horizontal
    - Classifier inlet attached with opening sized for cyclone discharge.
    - U shaped trough made from above listed material 3/16" thick.

- Integral cyclone frame.
- 4" organics return outlet with 125/250# flange connection.
- 316 Anchor bolts & fasteners.
- Freight, FCA to job site.
- One (1) Krebs Grit Cyclone – Model D-10B (100-150gpm), to include:
  - 4" overflow return outlet with 125/250# flange connection.
  - 3" Inlet 125/250# flange connection.
  - Inlet pressure of 7-12 PSIG operation pressure.
  - Fabricated Carbon Steel Housing.
  - Replaceable Gum Rubber Liners for all Housing Sections.
  - Sized Nihard Vortex Finder.
  - Adjustable Apex Liner.
  - Quick release toggle clamps for the apex.
  - Average underflow to classifier--10 GPM.
  - Pressure gauge assemblies complete with protective diaphragms (0-30 psi dials) on cyclone inlet.
  - Freight, FCA to job site.

#### CONTROL PANELS:

Control panel and control system shall be designed and implemented per Ovivo standard grit system controls spec document number: CD00100. This specification shall supersede all other specification(s) related to this project, including but not limited to customer specifications and or third party engineering specifications. If the requirements of the customer is to follow a custom specification, a fill review by Ovivo must be performed. After a full review, Ovivo reserves the right to adjust this bid/proposal with a new controls system, and price.

Ovivo's standard controls package shall include at minimum the following:

- One (1) standard main control enclosure per specification CD00100 that will include:
  - HMI.
  - PLC.
  - E-Stop Push Button.
- One (1) Operator Control Console (OCC) per specification CD00100, that will include:
  - E-Stop Push Button.
  - Hand Of Auto (HOA) Selector switch.
- One (1) Interconnection document (ICD) per specification CD00100.
- One (1) programmed Programmable Logic Controller (PLC) per specification CD00100.
- One (1) programmed Human Machine Interface (HMI) per specification CD00100.

#### ITEMS NOT INCLUDED (But not limited to the following):

- Access ladder, platform, or stairs.
- Civil design.
- Concrete work.
- Control panel and Electrical connections.
- Disconnect switches.
- Drain piping for the grit classifier.
- DVD recordings of training sessions.

- Grit chutes, containers or dumpster.
- Installation.
- Spare motors.
- Offloading at job site.
- Taxes.

#### FIELD SERVICE:

Ovivo's scope includes the service of a qualified service engineer for the following:

- Three (3) Days / one (1) Trips at the site for the supervision of equipment start-up, testing supervision, and instructing the operators.
- Additional service days can be purchased at the current rate.

## ADDITIONAL FIELD SERVICE

When included and noted in the Product pricing of each proposal item, Ovivo will supply the service of a competent field representative to inspect the completed installation and adjustment of equipment, supervise initial operation, and instruct Owner's personnel in the operation and maintenance of each proposal item for the number of eight (8) hour days. Notwithstanding Ovivo's performance of the above-referenced services, Ovivo shall not be held liable for any faulty workmanship or other defects in the Products' installation, or for other goods and/or services, performed by third parties unless such goods and/or services are expressly included under Ovivo's scope of work.

If additional service is required, it will be furnished to the Purchaser and billed to him at the current rate for each additional day required, plus travel and lodging expenses incurred by the service personnel during the additional service days.

It shall be the Purchaser's responsibility to provide for all necessary lubrication of all equipment prior to placing equipment in operation. All equipment must be in operating condition and ready for the Field Service Engineer when called to the project location. Should the Purchaser/Owner not be ready when the Field Service Engineer is requested or if additional service is requested, the Ovivo current service rates will apply for each additional day required, plus travel and lodging expenses incurred by the service personnel during the additional service days.

## SURFACE PREPARATION AND PAINTING GENERAL INFORMATION

If painting the Products is included under Ovivo's scope of work, such Products shall be painted in accordance with Ovivo's standard practice. Shop primer paint is intended to serve only as minimal protective finish. Ovivo will not be responsible for condition of primed or finished painted surfaces after equipment leaves its shops. Purchasers are invited to inspect painting in our shops for proper preparation and application prior to shipment. Ovivo assumes no responsibility for field service preparation or touch-up of shipping damage to paint. Painting of fasteners and other touch-up to painted surfaces will be by Purchaser's painting contractor after mechanism erection.

Clarifier motors, gear motors and center drives shall be cleaned and painted with manufacturer's standard primer paint only.

It is our intention to ship major steel components as soon as fabricated, often before drives, motors and other manufactured components. Unless you can insure that shop primed steel shall be field painted within thirty (30) days after arrival at the jobsite, we encourage you to purchase these components in the bare metal (no surface prep or primer) condition.

Ovivo cannot accept responsibility for rusting or deterioration of shop applied prime coatings on delivered equipment if the primed surfaces have not been field painted within thirty (30) days of arrival at the jobsite using manufacturers' standard primers. Other primers may have less durability.

## PRICING TERMS

The prices quoted are based upon Purchaser's acceptance of this proposal, through the submission of a purchase order or other written acceptance, being placed no later than **thirty (30) days** after date of bid opening, or upon Purchaser's acceptance of this proposal by **March 2nd, 2021**, whichever date is earlier. After expiration of the pricing effectivity period, prices will be subject to review and adjustment. Prices quoted are FCA surface point of shipment, with freight included to an accessible point nearest the jobsite. Federal, state or local sales, use or other taxes are not included in the sales price.

## PAYMENT TERMS

Payment terms are as follows:

Milestone	Cumulative Percent Invoiced – Type Muni
Ovivo Acknowledgement of P.O.	5%
Submittal Approval	50%
Fabrication Complete and Ready To Ship <sup>1</sup>	90%
Equipment Delivery	95%
Field Service Trips Per Contract	100%

<sup>1</sup>This milestone will only be invoiced if delays from Purchaser or due to parties other than Ovivo occur. Additional storage and other terms may apply per paragraphs below.

Invoice will be billed at **100%** of the work complete in accordance with the schedules above. No more than 5% retention shall be withheld from each invoice. The final 5% (Retention) shall be invoiced at Substantial Completion of Ovivo's Scope, which may be different that Substantial Completion of the overall project, not to exceed **sixty (60) days** from equipment delivery of the Major Item.

Purchaser shall remit payment for proper invoices received from Ovivo in accordance with the payment terms stated above even if the Purchaser has not been paid by the Purchaser's customer (the "Owner"), if Purchaser is not the end-user of the Products. Payments are due within thirty (30) days after Purchaser's receipt of invoice. Overdue and unpaid invoices are subject to a service charge of 2% per month until paid.

Any postponement of delivery dates requested by the Purchaser; or if Purchaser requests or causes cancellation, suspension or delay of Ovivo's work, for delays of up to ninety (90) days, Purchaser shall pay Ovivo all appropriate charges incurred up to date of such event, per the schedules above, which may include partial completion of milestones. Additionally, all charges related to and risks incidental to storage, disposition and/or resumption of work shall be borne solely by Purchaser. For delays less than ninety (90) days, Ovivo will delay portions of fabrication and delivery, to the extent possible. Delays greater than ninety (90) days are subject to price escalation at 1.5% per month for each month or partial month of delay, further subject to the steel escalation clause; or, if possible, equipment shall be stored at the cost of the Purchaser. For delays greater than ninety (90) days, Purchaser shall

accept transfer of title and make full payment for all work due and payable, thirty (30) days from the date work is placed into storage.

Credit is subject to acceptance by Ovivo's Credit Department.

## PRICE ESCALATION

The prices submitted are based upon Purchaser's acceptance of this proposal by October 1, 2020.

If the above indicated order date is exceeded, prices and shipping dates are subject to review and adjustment. Should shipment dates be exceeded because of actions of parties other than by Ovivo, escalation of the selling prices at the rate of 1.5% per month for each month or partial month of delay will be applied. This escalation will be applied only if shipment is delayed by actions of parties other than by Ovivo.

## TAXES

Federal, State or local sales, use or other taxes are not included in the sales price. Such taxes, if applicable, shall be for Purchaser's account.

## BONDS

Any performance and/or payment bond agreed to be provided by Ovivo will extend to supply of equipment and services for a period not to exceed the first twenty four (24) months of the service or warranty period, and for a value not to exceed the total price of this Proposal.

## BACKCHARGES

In no event shall Purchaser/Owner do or cause to be done any work, purchase any services or material or incur any expense for the account of Ovivo, nor shall Ovivo be responsible for such work or expenses, until after Purchaser/Owner has provided Ovivo's PROJECT MANAGER full details (including estimate of material cost and amount and rate of labor required) of the work, services, material or expenses, and Ovivo has approved the same in writing. Ovivo will not accept Products returned by Purchaser/Owner unless Ovivo has previously accepted the return in writing and provided Purchaser/Owner with shipping instructions.

### **\*\*PURCHASE ORDER SUBMISSION\*\***

In an effort to ensure all purchase orders are processed timely and efficiently, please submit all purchase order documentation to the following department and address:

Ovivo USA, LLC  
4246 Riverboat Road, Suite 300  
Salt Lake City, Utah 84123

Attn: Jared Holindrake  
Tel. #: 801-931-3000  
Email: jared.holindrake@ovivowater.com

## GENERAL ITEMS NOT INCLUDED

Unless specifically and expressly included above, prices quoted by Ovivo do not include unloading, hauling, erection, installation, piping, valves, fittings, stairways, ladders, walkways, grating, wall spools, concrete, grout, sealant, dissimilar metal protection, oakum, mastic, field painting, oil or grease, electrical controls, wiring, mounting hardware, welding, weld rod, shims, leveling plates, protection against corrosion due to unprotected storage, special engineering, or overall plant or system operating instructions or any other products or services.

Performance and payment security, including but not limited to bonds, letters of credit, or bank guarantees, are not included, but can be provided if purchased for an additional cost.

## MANUALS

The content of any and all installation, operation and maintenance or other manuals or documents pertaining to the Products are copyrighted and shall not be modified without the express prior written consent of Ovivo. Ovivo disclaims any liability for claims resulting from unauthorized modifications to any such manuals or other documents provided by Ovivo in connection with the Project.

## WARRANTY AND CONDITIONS

Ovivo standard Terms and Conditions of Sale is attached and made an essential part of this proposal. These terms and conditions are an integral part of Ovivo's offer of Products and related services and replace and supersede any terms and conditions or warranty included in Purchaser or Owner requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Ovivo.

## CONFIDENTIALITY

This document is not to be reproduced or submitted to any third party without the written consent of Ovivo.

This document contains, or Ovivo may have previously disclosed to Purchaser, certain technical and business information of Ovivo and/or Ovivo's affiliated entities, including certain copyrighted material, which is considered to be confidential. Such information, hereinafter referred to individually and collectively as the "Information", may include, without limitation, ideas, concepts, development plans for new or improved products or processes, data, formulae, techniques, flow sheets, designs, sketches, know-how, photographs, plans, drawings (regardless of what name, if any, is stated on the title block), specifications, samples, test specimens, reports, customer lists, price lists, findings, studies, computer programs and technical documentation, trade secrets, diagrams, and inventions, notes, and all information pertaining thereto and/or developed there from. This Information is disclosed in good faith solely for the purposes of our proposal, and in addition on the understanding that its confidentiality will be properly maintained and safeguarded.

Neither this proposal, the Information nor any part thereof may be copied, reproduced or used for any purpose other than that for which it is disclosed by Ovivo. Except as reasonably necessary for the evaluation of this proposal, no part thereof may be disclosed to any other person, without Ovivo's prior consent in writing.

Ovivo will retain the rights to any intellectual property rights ("IPR") related to the Products. Ovivo will grant a non-exclusive royalty free license to use the IPR for the sole purposes of operating and maintaining the equipment supplied by Ovivo.

The duties, obligations, restrictions, and responsibilities described hereinabove shall apply to the Purchaser, their agents, affiliates, and all related parties regardless of whether any transaction occurs between Ovivo and Purchaser, and shall survive termination, cancellation, and expiration of any transaction between Ovivo and Purchaser.

In the event of a breach of the terms herein, Ovivo maintains the right to seek any and all remedies and damages available to it, including but not limited to the amount, including interest, by which Purchaser profited from the breach, any gains made by Purchaser or any third party who received Information from Purchaser, compensation for all Ovivo loss or injury, and the value of Ovivo's expectation created by the promise of Purchaser. The parties agree Ovivo would suffer irreparable harm in the event of any breach of these terms, and therefore Ovivo shall be entitled to any and all injunctive relief available.

Very truly yours,

Ovivo USA, LLC

Attachment:

Ovivo USA, LLC General Terms and Conditions

## TERMS AND CONDITIONS OF SALE

**1. ACCEPTANCE.** The proposal of **Ovivo USA, LLC** ("SELLER"), as well as these terms and conditions of sale (collectively the "Agreement"), constitutes SELLER's contractual offer of goods and associated services, and PURCHASER's acceptance of this offer is expressly limited to the terms of the Agreement. The scope and terms and conditions of this Agreement represent the entire offer by SELLER and supersede all other solicitations, discussions, agreements, understandings and representations between the parties. Any scope or terms and conditions included in PURCHASER's acceptance/purchase order that are in addition to or different from this Agreement are hereby rejected.

**2. DELIVERY.** Any statements relating to the date of shipment of the Products (as defined below) represent SELLER's best estimate, but is not guaranteed, and SELLER shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in SELLER's proposal. If such delivery is prevented or postponed by reason of Force Majeure (as defined below), SELLER shall be entitled at its option to tender delivery to PURCHASER at the point or points of manufacture, and in default of PURCHASER's acceptance of delivery to cause the Products to be stored at such a point or points of manufacture at PURCHASER's expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this agreement. If shipment is postponed at request of PURCHASER, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from SELLER that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by SELLER with respect to the Products shall be for the account of PURCHASER and shall be paid by PURCHASER when invoiced. Delivery by SELLER of the Products shall constitute acceptance of the Products by PURCHASER, unless written notice of defect or nonconformity is received by SELLER within thirty (30) days of SELLER's delivery of the Products.

**3. TITLE AND RISK OF LOSS.** SELLER shall retain the fullest right, title, and interest in the Products to the extent permitted by applicable law, including a security interest in the Products, until the full purchase price has been paid to SELLER. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.

**4. PAYMENT TERMS.** SELLER reserves the right to ship the Products and be paid for such on a pro rata basis, as shipped. If payments are not made by the due date, interest at a rate of two percent (2%) per month, calculated daily, shall apply from the due date for payment. PURCHASER is liable to pay SELLER's legal fees and all other expenses in respect of enforcing or attempting to enforce any of SELLER's rights relating to a breach or threatened breach of the payment terms by PURCHASER. In the event of nonpayment SELLER reserves the further right to seek compensation from any third party in possession of the Products.

**5. TAXES.** Unless otherwise specifically provided in SELLER's quotation/proposal; PURCHASER shall pay and/or reimburse SELLER, in addition to the price, for all sales, use and other taxes, excises and charges which SELLER may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation, and/or use by SELLER or PURCHASER, of any of the Products or services dealt with herein (whether the same may be regarded as personal or real property). PURCHASER agrees to pay all property and other taxes which may be levied, assessed or charged against or upon any of the Products on or after the date of actual shipment, or placing into storage for PURCHASER's account.

**6. MECHANICAL WARRANTY.** Solely for the benefit of PURCHASER, SELLER warrants that new equipment and parts manufactured by it and provided to PURCHASER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from startup of the equipment not to exceed eighteen (18) months from the earliest of the notice of readiness to ship or the actual shipment. If any of SELLER's Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER's job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER; however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) any Products that have been altered or repaired in any way without SELLER's prior written authorization; (iii) The costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER's estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER's estimate of what the remaining service life of those parts should have been; provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER's design, SELLER's liability shall be limited solely to the assignment of available third-party warranties. **THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.** All warranties and obligations of SELLER shall terminate if PURCHASER fails to perform its obligations under this Agreement including but not limited to any failure to pay any charges due to SELLER. SELLER's quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.

**7. CONFIDENTIAL AND PROPRIETARY INFORMATION.** All nonpublic or proprietary information and data furnished to PURCHASER hereunder, including but not limited to price, size, type, design and other technical or business information relating to the Products is the sole property of SELLER and submitted for PURCHASER's own confidential use solely in connection with this Agreement and is not to be made known or available to any third party without SELLER's prior written consent.

**8. SURFACE COATING.** Any Product coating provided by SELLER shall be in accordance with SELLER's standard practice, unless otherwise agreed in writing.

**9. DRAWINGS AND TECHNICAL DOCUMENTATION.** When PURCHASER requests to approve drawings before commencement of manufacture, shipment may be delayed if approved drawings are not returned to SELLER within fourteen (14) days of receipt by PURCHASER of such drawings for approval. SELLER will furnish only general arrangement, general assembly, and if required, wiring diagrams, erection drawings, installation and operation-maintenance manuals for SELLER's equipment (in English language). SELLER will supply six (6) complete sets of drawings and operating instructions. Additional sets will be paid for by PURCHASER. Electronic files, if requested from SELLER, will be provided in *pdf, jpg or tif* format only.

**10. SET OFF.** This Agreement shall be completely independent of all other contracts between the parties and all payments due to SELLER hereunder shall be paid when due and shall not be setoff or applied against any money due or claimed to be due from SELLER to PURCHASER on account of any other transaction or claim.

**11. SOFTWARE.** PURCHASER shall have a nonexclusive and nontransferable license to use any information processing program supplied by SELLER with the Products. PURCHASER acknowledges that such programs and the information contained therein is Confidential Information and agrees: a) not to copy or duplicate the program except for archival or security purposes; b) not to use the program on any computer other than the computer with which it is supplied; and c) to limit access to the program to those of its employees who are necessary to permit authorized use of the program. PURCHASER agrees to execute and be bound by the terms of any software license applicable to the Products supplied.

**12. PATENT INDEMNITY.** SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER's Product hereunder and of itself constitutes an infringement of any valid

apparatus claims of any United States patent issued and existing as of the date of this Agreement, if notified promptly in writing and given all information, assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the PURCHASER against such claims of infringement. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the PURCHASER the right to continue using the Products, (b) replace the same with non-infringing Products, (c) modify the Product so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and PURCHASER shall indemnify SELLER for, any claim of infringement related to (a) the use of the Products for any purpose other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the Products in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products

**13. GENERAL INDEMNITY.** Subject to the limitations of liabilities of the parties set forth in this Agreement, each party shall protect and indemnify the other party, its parent and their respective officers, directors, employees and agents, from and against all claims, demands and causes of action asserted by, or in favor of, any entity to the extent of the indemnifying party's negligence or willful misconduct in connection with the performance of this agreement.

**14. DEFAULT, TERMINATION.** In the event that PURCHASER becomes insolvent, commits an act of bankruptcy or defaults in the performance of any term or condition of this Agreement, the entire unpaid portion of the purchase price shall, without notice or demand, become immediately due and payable. SELLER at its option, without notice or demand, shall be entitled to sue for said balance and for reasonable legal fees, plus out-of-pocket expenses and interest; and/or to enter any place where the Products are located and to take immediate possession of and remove the Products, with or without legal process; and/or retain all payments made as compensation for the use of the Products; and/or resell the Products, without notice or demand, for and on behalf of the PURCHASER, and to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Products in saleable condition, storage charges, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance then due to SELLER for the Products and to receive from the PURCHASER the deficiency between such net proceeds of sale and such balance. PURCHASER hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.

**15. CANCELLATION.** PURCHASER may terminate this Agreement for convenience upon giving SELLER thirty (30) days prior written notice of such fact and paying SELLER for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon. All such costs and expenses shall be paid to SELLER within ten (10) days of the termination of the Agreement, or be subject to an additional late payment penalty of five percent (5%) of the total amount of costs and expenses owed.

**16. REMEDIES.** The rights and remedies of the PURCHASER in connection with the goods and services provided by SELLER hereunder are exclusive and limited to the rights and remedies expressly stated in this Agreement.

**17. INSPECTION.** PURCHASER is entitled to make reasonable inspection of Products at SELLER's facility. SELLER reserves the right to determine the reasonableness of the request and to select an appropriate time for such inspection. All costs of inspections not expressly included as an itemized part of the quoted price of the Products in this Agreement shall be paid by PURCHASER.

**18. WAIVER.** Any failure by SELLER to enforce PURCHASER's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

**19. COMPLIANCE WITH LAWS.** If applicable laws, ordinances, regulations or conditions require anything different from, or in addition to that called for by this Agreement, SELLER will satisfy such requirements at PURCHASER's written request and expense.

**20. FORCE MAJEURE.** If SELLER is rendered unable, wholly or in material part, directly or indirectly, by reason of Force Majeure, to carry out any of its obligations hereunder, then on SELLER's notice in writing to PURCHASER within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, epidemics and pandemics, acts of or delays caused by governmental authorities, changes in laws and regulations, strikes, civil disobedience or unrest, lightning, fire, flood, washout, storm, communication lines failure, delays of the PURCHASER or PURCHASER's subcontractors, breakage or accident to equipment or machinery, wars, police actions, terrorism, embargos, and any other causes that are not reasonably within the control of the SELLER. If the delay is the result of PURCHASER's action or inaction, then in addition to an adjustment in time, SELLER shall be entitled to reimbursement of costs incurred to maintain its schedule. For the avoidance of doubt, if the cause relied upon has commenced prior to the Parties entered into a contracting relationship, it shall not render the cause void and/or not capable of being included within the definitions of Force Majeure, as listed within this Article 20.

**21. INDEPENDENT CONTRACTOR.** It is expressly understood that SELLER is an independent contractor, and that neither SELLER nor its principals, partners, parents, subsidiaries, affiliates, employees or subcontractors are servants, agents, partners, joint ventures or employees of PURCHASER in any way whatsoever.

**22. SEVERABILITY.** Should any portion of this Agreement, be held to be invalid or unenforceable under applicable law then the validity of the remaining portions thereof shall not be affected by such invalidity or unenforceability and shall remain in full force and effect. Furthermore, any invalid or unenforceable provision shall be modified accordingly within the confines of applicable law, giving maximum permissible effect to the parties' intentions expressed herein.

**23. CHOICE OF LAW, CHOICE OF VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Utah, without regard to its rules regarding conflicts or choice of law. The parties submit to the exclusive jurisdiction and venue of the state and federal courts located in Salt Lake City, Utah.

**24. ASSIGNMENT.** PURCHASER shall not assign or transfer this Agreement without the prior written consent of SELLER. Any attempt to make such an assignment or transfer shall be null and void. SELLER shall have the authority to assign, or otherwise transfer, its rights and obligations in connection with this Agreement, in whole or in part, upon prior written notice to PURCHASER.

**25. LIMITATION ON LIABILITY, TO THE EXTENT PERMISSIBLE BY LAW, SELLER SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY SELLER HEREUNDER, SELLER SHALL IN NO EVENT BE RESPONSIBLE TO PURCHASER OR ANY THIRD PARTY, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, LOSS OF DATA, SERVICE INTERRUPTIONS, COST OF PURCHASED OR REPLACEMENT POWER, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM DEFECTS, DELAY, OR FROM ANY OTHER CAUSE WHATSOEVER.**

**26. PRIVACY AND DATA PROTECTION.** Seller has put in place rigorous safeguards and procedures regarding privacy and data protection, notably the Ovivo Privacy Policy ([ovivowater.com/privacy-policy](http://ovivowater.com/privacy-policy)), and requires that Purchaser adhere to its data protection principles to the extent applicable to Purchaser.

**27. DATA COLLECTION.** PURCHASER consents to the collection of the Product's operational data and to the use of such data for the purpose of improving the Products and other purposes stated herein. PURCHASER further agrees that such data collection does not constitute a performance monitoring service or duty by SELLER.

**28. INSURANCE.** SELLER shall maintain that its current levels of insurance for the duration of the Project, as set forth in its standard certificate of insurance, available upon request.

**29. BONDS.** If PURCHASER deems it necessary, and within ten (10) days of PURCHASER's request, SELLER shall provide one or more Bonds in favor of PURCHASER, at PURCHASER's expense, by an institution, and in a form, approved in advance by SELLER.

**30. PERMITS.** PURCHASER shall be solely responsible to obtain and maintain in force all necessary permits with respect to any products to be provided by SELLER hereunder and any intended use by PURCHASER.