

CITY COUNCIL RESOLUTION NO. 2020-118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE CITY, FLORIDA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH TSC-JACOBS NORTH, INC., FOR THE REPLACEMENT OF THE COMPLETE WASTEWATER CLARIFIER MECHANISM AND ALL ASSOCIATED EQUIPMENT LOCATED AT THE ST. MARGARET'S WASTEWATER TREATMENT FACILITY AT A PRICE NOT-TO-EXCEED \$434,895.00.

WHEREAS, the City of Lake City, Florida (hereinafter "City") is in need of a seventy (70) foot diameter clarifier mechanism to replace the existing clarifier at the St. Margaret's Wastewater Treatment Facility (hereinafter "the Project"); and

WHEREAS, the City, under the authority of and in accordance with Fl. State Statute 287.057(3)(c), intends to award TSC-Jacobs North, Inc. (hereinafter "TSC") the Project through the sole source procurement mechanism; and

WHEREAS, the City's administration recommends that the Project be awarded to TSC, and that TSC be awarded the contract for the Project at a price of \$434,895.00. (the "Contract Price"); and

WHEREAS, the City Council finds that it is in the City's best interest to award the contract to TSC and to award the contract to TSC for the aforementioned Project pursuant to the terms, provisions, conditions, and requirements of the Contract attached hereto as "Exhibit A".

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 incorporated herein and made a part of this Resolution.

Section 2. The Project is awarded to TSC-Jacobs North, Inc, at the Contract Price in accordance with the referenced Agreement.

Section 3. The City Manager and City Attorney are authorized to make such reasonable changes and modifications to the Contract 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 TSC-Jacobs North, Inc., to exceed the Contract Price. The Mayor is authorized and directed to execute and deliver the Contract 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 TSC-Jacobs North, Inc., shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions, and additions.

[Remainder of this page intentionally left blank]

PASSED AND ADOPTED at a meeting of the City Council this ____ day of October, 2020.

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

**CONTRACT BETWEEN CITY OF LAKE CITY, FLORIDA AND TSC-
JACOBS NORTH, INC., FOR THE PURCHASE AND INSTALLATION OF
A COMPLETE CLARIFIER MECHANISM AND ASSOCIATED
EQUIPMENT**

THIS CONTRACT made and entered into this ____ day of October, 2020, by and between the CITY OF LAKE CITY, FLORIDA, a municipal corporation, with a mailing address of 205 North Marion Avenue, Lake City, Florida 32055 (herein referred to as "City") and TSC-Jacobs North, Inc. with a principal and mailing address of 24156 SR 54, Suite 3, Lutz, Florida 33559 (herein referred to as "Contractor").

WHEREAS, the City requires the replacement of a complete clarifier mechanism and all associated equipment at the St. Margaret's Wastewater Treatment Facility and the Contractor has recommended a seventy (70) foot diameter clarifier mechanism and associated equipment (hereinafter "the Project"); and

WHEREAS, Section 2-178, Code of the City of Lake City, Florida requires a competitive bidding process and a formal contract to be entered when procuring services valued in excess of \$20,000.00, unless an exemption applies; and

WHEREAS, the City completed a Request for Information (RFI-027-2020) and the Contractor selected was identified as the exclusive agent for the equipment needed for the Project which meets the sole source exemption to the competitive procurement required by section 2-178, Code of the City of Lake City, Florida; and

WHEREAS, the City desires to enter into a contract with the Contractor to memorialize the intentions and obligations of the City and Contractor.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. **Recitals**: The above recitals are all true and accurate and are incorporated herein and made a part of this Contract.

2. **Definitions**: The following definitions of terms associated with this Contract are provided to establish a common understanding between both parties to this Contract, as to the intended usage, implication, and interpretation of terms pertaining to this Contract:

(a) "CITY" means the City Council of the City of Lake City, Florida, any official of the City, and any employee of the City, who shall be duly authorized to act on the City's behalf relative to this Contract.

(b) "CONTRACT" means the terms, conditions, and covenants expressed herein in addition to all the terms, conditions, and covenants listed in the RFI, and reasonably inferred to the City, and general conditions, all of which are incorporated herein and made an essential part of this agreement between the parties. Any conflicts in the terms of any documentation shall be resolved using the terms and conditions provided by the City documentation.

(c) "CONTRACTOR" means TSC-Jacobs North, Inc. which has executed this Contract, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the services and work of sub-contractors, required under the covenants, terms, and provisions contained in this Contract and any and all amendments to this Contract.

(d) "SERVICES" means professional services for the purchase and

installation of one (1) seventy (70) foot diameter clarifier mechanism. Specifically, the services and responsibilities listed within the RFI and all responses of the Contractor to the RFI.

(e) "SUB-CONTRACTOR" means any individual or firm offering professional services which is engaged by the Contractor or one of its sub-contractors in providing and performing the professional services, work and materials for which the Contractor is contractually obligated, responsible and liable to provide and perform under this Contract and any and all amendments thereto. The City shall not be a party to, responsible or liable for, or assume any obligation whatsoever for any agreement entered into between the Contractor and any sub-contractor or any sub-sub-contractor.

(f) "PARTIES" means the signatories to this Contract.

3. **Engagement of Contractor:** City hereby engages Contractor to provide City with the services identified herein and incorporated herein.

4. **Term of Contract:** The term of this Contract shall be no more than six (6) weeks from the delivery of the equipment identified herein, at which time installation must be complete. Any extension shall be contingent upon the availability of funds, satisfactory performance by the Contractor, and approval by the appropriate City representatives. The Contractor shall not commence any work until the Contractor has provided the City's Procurement Department with proof of insurance coverages.

5. **Compensation and Method of Payment:** City agrees to pay the Contractor compensation for its services rendered to the City not to exceed the

amount shown in Contractor's Proposal which is four hundred thirty-four thousand eight hundred and ninety-five dollars and zero cents (\$434,895.00). The Contractor shall be paid as follows: (a) fifteen percent (15%) net cash upon submittal of the first invoice; and (b) eighty percent (80%) net cash upon submittal of the second invoice which shall be submitted after arrival of all of the necessary equipment; and (c) five percent (5%) upon project completion. Otherwise, payment to the Contractor will be made in accordance with F.S. 218.70 "Local Government Prompt Payment Act" upon receipt of the invoices, assuming there are no contested amounts with the invoice.

6. **Insurance:** Contractor agrees to and shall procure and maintain insurance during the term of this Contract and shall provide proof of the following insurance coverages, in addition to any listed in the RFI, to the City Procurement Department prior to the commencement of work:

(a) Comprehensive commercial general liability insurance covering as insured the Contractor and City with limits of liability of not less than \$2,000,000.00 per occurrence and aggregate, for coverage of bodily injury or death to any person or persons, property damage, premises-operations, independent contractors, products/completed operations; and

(b) Comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles with coverage limits of not less than \$1,000,000.00 as provided for in the RFI; and

(c) Worker's compensation insurance for the benefit of the employees of Contractor, as required by the laws of the State of Florida; and

Providing and maintaining adequate insurance coverage is a material obligation of the Contractor and is of the essence of the Contract. This Contract does not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability or obligations under the Contract. All insurance policies shall be through Insurers authorized to write policies in Florida. All certificates shall provide that the policy or policies of insurance shall not be changed or canceled until at least ten (10) days prior written notice shall have been given to City. As to insurance other than workers compensation and professional liability insurance, the coverage shall name City as an additional insured for City's vicarious liability resulting from the conduct of Contractor and other employed or utilized sub-Contractors in the performance of the services.

7. **Indemnity:** Contractor is an independent contractor and agrees to indemnify, and hold harmless the City and its agents, and employees from and against all suits, actions, claims, damages, costs, charges, and expenses, including court costs and attorneys' fees, of any character caused by or brought because of any injury or damage received or sustained by any person, persons, or property caused by or resulting from any asserted negligent act, errors, or omissions of Contractor or its agents, employees, or sub-contractors.

The indemnity required hereunder shall not be limited by reason of the specifications of any particular insurance coverage in this Contract.

Notwithstanding any other provisions of this Contract, neither party will be responsible to the other party for consequential damages, including, but not

limited to, loss of profit, loss of investment or business interruption.

8. **Liability:** The Contractor shall be, and agrees to be and remain liable for any and all damages, losses, and expenses incurred by the City caused by the errors, omissions, negligence or delays of the Contractor, or by any sub-contractor engaged by the Contractor in providing, performing and furnishing services, work or materials pursuant to this Contract and any and all damages, losses, and expenses to the City caused by the Contractor's negligent performance of any of its obligations contained in this Contract. The Contractor shall be liable and agrees to be liable for and shall indemnify and hold City harmless for any and all claims, suits judgments, or damages, losses and expenses, including court costs, expert witness and professional consultation services, and attorney fees arising out of the Contractor's errors, omissions, negligence, breaches of contract or delays, or those of any and all sub-contractors engaged by the Contractor during the providing, performing and furnishing of services or materials pursuant to this Contract.

9. **Licenses and Compliance with Regulations:** The Contractor agrees to and shall obtain and maintain throughout the period that this Contract is in effect, all licenses and authorizations as are required to do business in the State of Florida, including, but not limited to, licenses required by any federal and state boards and other governmental agencies responsible for regulating and licensing the services provided and performed by Contractor pursuant to this Contract.

Contractor agrees to and will abide by and comply in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of any and all

governmental agencies which may regulate or have jurisdiction over the services to be provided and performed by Contractor for the City, and by any sub-contractor engaged by the Contractor.

10. **Timely Accomplishment of Services:** The timely and expeditious accomplishment and completion by the Contractor of all services provided pursuant to this Contract is of the essence. The Contractor agrees to employ, engage, retain, and assign an adequate number of personnel throughout the period of this Contract so that all services provided pursuant to this Contract will be provided, performed and completed in a diligent, continuous, expeditious and timely manner throughout.

11. **Controlling Law:** This Contract is to be governed by the laws of the State of Florida. If any term or provision of the Contract is found to be illegal or unenforceable such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. It is further agreed and understood that in the event of any dispute between the City and Contractor arising out of any interpretation or compliance with any of the terms, conditions, and requirements of this Contract proper venue for filing any lawsuit with respect to any such disputes shall lie in Columbia County, Florida. It is intended and understood that this venue provision shall survive any bankruptcy filing.

12. **Attorneys' Fees and Costs:** In the event of default by either party under the terms of the Contract, the defaulting party shall be liable for, and agrees to pay all costs and expenses incurred in the enforcement of this Contract, including reasonable attorneys' fees as well as fees, costs, and expenses in the

collection of said expenses.

13. **Other litigation:** The Contractor shall notify the City of any legal actions filed against it for a violation of any laws, rules, codes ordinances, or licensing requirements within thirty (30) days of the action being filed. The Contractor shall notify the City of any legal actions filed against it by a government subdivision or for any claims of sub-Contractors or materialmen. Failure to notify the City of a legal action within thirty (30) days of the action shall be grounds for termination.

14. **Public Records:** The Contractor shall comply with all public records laws.

a. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

City Clerk, City of Lake City
205 North Marion Avenue
Lake City, Florida 32055
386-719-5826 or 386-719-5756

b. The Contractor shall comply with public records laws, specifically the Contractor shall:

1. Keep and maintain public records required by the City to perform the services.

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119 of Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City.

If the Contractor considers any portion of any documents, data, or records submitted to the City to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution, or other law, Contractor must simultaneously provide the City with a separate redacted copy of the information it claims as confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and it shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claim are confidential, proprietary, trade secret or otherwise not subject to disclosure.

4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records

stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

5. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

15. **Entire Agreement:** Incorporated herein, and made a part hereof, are the Request for Information (RFI-027-2020) and all addendum, and all attachments thereto, and the Contractor's response to the RFI. With those incorporations, this Contract constitutes the entire agreement between City and Contractor and supersedes all prior written or oral understandings. Should any term or condition of the documents referenced within this paragraph be found to conflict with a term or condition of this contract the term or condition of this contract shall prevail and be binding. This Contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument adopted by resolution.

16. **Effective and Binding:** This Contract shall not become effective or binding upon City unless and until the City Council of City shall have authorized the Mayor of the City to execute the same by the adoption of an official resolution.

17. **Effective Date:** It is agreed by City and Contractor that the effective date is that date first written above.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

CITY OF LAKE CITY, FLORIDA

By: _____
Stephen M. Witt,
Mayor

ATTEST:

Approved as to form and legality:

By: _____
Audrey Sikes, City Clerk

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

ATTEST:

TCS JACOBS NORTH, INC.

By: _____

By: _____
John A. Verscharen,
President

Printed Name & Title



TSC-JACOBS NORTH

24156 SR 54, Suite 3, Lutz, Florida 33559
Phone 813-242-2660 Fax 813-242-2597

- Tank, platform or feedwell covers of any kind.
- See general items listed hereafter.

INSTALLATION SCOPE

The scope of field service work includes the replacement of the complete clarifier mechanism and all associated equipment. This includes receiving and unloading new clarifier equipment, demolishing/disposing of existing clarifier equipment, and full installation of all new equipment. All new clarifier equipment to be shop primed and painted. Any new clarifier equipment requiring field / touch up painting will be painted with 2 coats of Tnemec N69 or 104. Existing weirs/baffles to remain. Electrical disconnection and reconnection included.

SITework & Earthwork

- Restore Work Area

PROCESS PIPING

- Replacement of Existing Service Water Piping; Extending Across Catwalk
- New Processing Piping, Valves, Fittings

ELECTRICAL

- Electrical Disconnection and Reconnection of New Equipment (Using Existing Conductors)
- New Power Equipment (Disconnects, Panels, Etc.)
- Salvage and Re-Install Existing Light Fixtures
- New Conduit (if needed) from tank edge to center.
- New Instrumentation, Controls, SCADA work, Fiberoptic Cable and/or Terminations

MISCELLANEOUS

- Sanitary Facilities & Dumpsters

SAFETY

- All PPE Normally Required for Projects of This Nature
- OSHA 30 (Principals)
- OSHA 10 (Superintendents)
- Weekly Toolbox Meetings

Only the items listed above are included in this proposal. This quote specifically excludes:



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NOT INCLUDED:

- Any modifications or upgrades to existing electrical and/or control panel.
- Any conduit work.
- Any conduit or wiring for any devices, instruments, PLC's, panels, etc.
- Maintenance of traffic.
- Patching and any form of painting.
- Concrete, asphalt, gravel, & sod removal, restoration, or repair. Unless specifically stated above.
- Permitting or Testing fees.
- Provisions for any night work including manpower or equipment, or any special access including additional manpower.
- Cost for use of power.
- Performance & payment Bonds (Available for added costs).
- Certified Payroll, Davis Bacon or any scale wages, or MBE or MWBE requirements or filings.

COMMENTS AND CLARIFICATIONS:

Normal hours of operation Mon – Fri, 40 hour work week. Approximate schedule to complete the scope of work, after delivery of the new equipment, is approximately four (4) to six (6) weeks.

SELL PRICE:

TSC Jacobs North proposes to provide the above scope of work for the lump sum price of **Four Hundred and Thirty Four Thousand Eight Hundred Ninety Five Dollars and Zero Cents (\$434,895.00)**. Thank you for the opportunity to be of service. If you have any questions, or if you need something additional, please do not hesitate to contact me.

EQUIPMENT DELIVERY

TSC Jacobs North / Ovivo (Seller) will submit drawings and other information for approval within **eight (8) weeks** after Purchaser's receipt of Seller's written acknowledgement of an approved purchase order. Seller intends to ship all Products **twenty-four (24) weeks** after receipt of approved submittals from Purchaser. Seller intends to ship all Products as indicated above after receipt of approved purchase order and approved submittal drawings from Purchaser. However, the date of shipment of the Products 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 this proposal. If

such delivery is prevented or postponed by reason of Force Majeure, as defined in Seller's standard terms and conditions of sale, 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



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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 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.

GENERAL NOTES

The dates of drawing submission and shipment of the Products represents 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 this proposal. If such delivery is prevented or postponed by reason of Force Majeure, as defined in Seller's standard terms and conditions of sale, 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 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 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.

PRICING TERMS

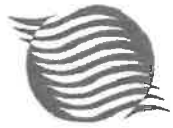
All prices quoted are in US Dollars. Prices are good for 45 days. After expiration of the pricing effective period, prices will be subject to review and adjustment. Prices quoted are FOB point of delivery, with freight included to an accessible point nearest the jobsite. Federal, state or local sales, use or other taxes are not included in the sales price.

PAYMENT TERMS

Payment terms are:

- Fifteen percent (15%) net cash after submittal.
- Eighty percent (80%) net cash upon shipment of major Product items.
- Ten percent (5%) upon the earlier of (a) Product startup and (b) one hundred eighty (180) days after completion of shipment

Seller will submit an invoice and the invoice will be billed at % of the work complete in accordance with the schedules above. No more than 10% retention shall be withheld from each invoice. The final 10% (Retention) shall be invoiced at Substantial Completion of applicable Scope, which may be different that Substantial Completion of the overall project, not to exceed 60 days from equipment delivery of the Major Item.



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Purchaser shall remit payment for proper invoices received from Seller 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 Seller's work, for delays of up to 90 days, Purchaser shall pay Seller 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 90 days, Seller will delay portions of fabrication and delivery, to the extent possible. Delays greater than 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 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.

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.

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 Seller, nor shall Seller be responsible for such work or expenses, until after Purchaser/Owner has provided Seller'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 Seller has approved the same in writing. Seller will not accept Products returned by Purchaser/Owner unless Seller 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 (can be provided electronically):

Attn: Paul Wachter
TSC Jacobs North
24156 SR 54 - Suite 3
Lutz, Florida 33559
Fax #: 813-242-2597
Tel. #: 813-242-2660
paultscjn@verizon.net



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Phone 813-242-2660 Fax 813-242-2597

ADDITIONAL FIELD SERVICE

When included and noted in the Product pricing of each proposal item, Seller 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 Seller's performance of the above-referenced services, Seller 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 Seller's scope of work.

If additional service is required over and above the Field Services described above, 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 Contractor not be ready when the Field Service Engineer is requested or if additional service is requested, the Seller 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.

GENERAL ITEMS NOT INCLUDED

Unless specifically and expressly included above, prices quoted by Seller 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 Seller. Seller disclaims any liability for claims resulting from unauthorized modifications to any such manuals or other documents provided by Seller in connection with the Project.



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WARRANTY AND CONDITIONS

Seller 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 Seller'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 Seller.

CONFIDENTIALITY

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

This document contains, or Seller may have previously disclosed to Purchaser, certain technical and business information of Seller and/or Seller'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 Seller. Except as reasonably necessary for the evaluation of this proposal, no part thereof may be disclosed to any other person, without Seller's prior consent in writing.

Seller will retain the rights to any intellectual property rights ("IPR") related to the Products. Seller will grant a non-exclusive royalty free license to use the IPR for the sole purposes of operating and maintaining the equipment supplied by Seller. 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 Seller and Purchaser, and shall survive termination, cancellation, and expiration of any transaction between Seller and Purchaser.

In the event of a breach of the terms herein, Seller 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 Seller loss or injury, and the value of Seller's expectation created by the promise of Purchaser. The parties agree Seller would suffer irreparable harm in the event of any breach of these terms, and therefore Seller shall be entitled to any and all injunctive relief available.



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Attachment:
General Terms and Conditions



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Phone 813-242-2660 Fax 813-242-2597

TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE. The proposal of TSC Jacobs North ("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.



TSC-JACOBS NORTH

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12. **PATENT INDEMNITY.** SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER's Product hereunder in 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 noninfringing, 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 Tampa, Florida.
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), 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.