

**STANDARD GOVERNMENTAL CONTRACT AND
PURCHASING RIDER FOR CONTRACTS WITH THE CITY
OF PFLUGERVILLE, TEXAS**
(Version 2023)

1. Application. This Governmental Rider applies to, is part of, and takes precedence over any conflicting provision in or attachment to the Contract (Contract) is entered into by and between CITY OF PFLUGERVILLE, TEXAS ("City") and Ovivo USA, LLC (Vendor or Contractor) (collectively, the "Parties"). The Contract involved in this Rider is described as follows:

Title of Contract: **OMR7252024.03-MW**

2. Payment Provisions. The City's payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to Chapter 2251, Texas Government Code. City reserves the right to modify any amount due to contractor presented by invoice to the city if necessary to conform the amount to the terms of the contract. In no event shall retainage be held beyond one hundred eighty (180) days after completion of shipment.

____. When denoted as applicable, the City has identified that time is of the essence in the performance of this contract and the City will suffer financial loss if the contract is not completed within the times specified in the contract herein referenced, plus any extensions mutually agreed to by the Parties. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by City if the contract is not completed on time. Accordingly, instead of requiring such proof, the Parties hereby agree that as liquidated damages for delay, but expressly acknowledged herein as not being a penalty, **Vendor shall pay City two hundred fifty US dollars (\$250) for each working day that expires after the time specified in the contract for completion. Vendor's liability for liquidated damages shall not exceed, in the aggregate, any amount more than three percent (3%) of the value of the equipment that is late in delivery. Vendor shall not be liable to pay liquidated damages in cases of Force Majeure and for Owner/City-caused delays such as late drawing approval, inspection delays, scope changes etc. Notwithstanding any other provision of the Contract to the contrary, payment of liquidated damages shall be Vendor's sole liability and City's sole remedy for late delivery of the equipment. Such remedies shall not be enforced unless City suffers an economic loss as a result of Vendor's late delivery.**

3. Multiyear Contracts. If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI,

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Texas Constitution). It is understood and agreed the City shall have the right to terminate the agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to continue the contract, as determined by the City's budget for the fiscal year in question. The City may execute such termination by giving contractor a written notice of termination at the end of its then current fiscal year.

4. Best Value Determination. All competitive bids or proposals received shall be evaluated based on the best value for the City. Best value shall be determined any relevant criteria specifically listed in the solicitation and by considering all or part of the criteria listed below:

- a. Bid price.
- b. Reputation of the bidder and of bidder's goods and services.
- c. The quality of the bidder's goods or services.
- d. The extent to which the goods or services meet the City's needs.
- e. Bidder's past relationship with the City. All vendors shall be evaluated on their past performance and prior dealings with the City to include, but not limited to, failure to meet specifications, poor quality, poor workmanship, and late delivery.

5. Local Preference. The City Council supports the local preference option for purchasing. In accordance with Chapter 271.9051 of the State of Texas Local Government Code, the City Council may choose to award a competitive bid to a bidder whose principal place of business is in the City limits, provided that this bid is within 5% of the lowest bid price received.

6. No Ex-Parte Communications during Competitive Bidding Period. To insure the proper and fair evaluation of a response, the City prohibits ex parte communication (e.g., unsolicited) initiated by the proposed contractor to a City official or employee evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until 5:00 pm on the day specified as the deadline for questions. Any communication between responder and the City after the deadline for questions will be initiated by the appropriate City official or employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex parte communication may be grounds for disqualifying the offending responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

7. Abandonment or Default. A contractor who abandons or defaults the work on the contract and causes the City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

8. Disclosure of Litigation. Each contractor shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the respondent or which has occurred in the past in which the respondent has been judged guilty or liable by a competent court regardless of whether the Court Order or Judgment is final or on appeal.

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9. Cancellation. The City reserves the right to cancel the contract without penalty by providing 30 days prior written notice to the contracting party. Termination under this paragraph shall not relieve the contractor of any obligation or liability that has occurred prior to cancellation. **NOTE: This contract is subject to cancellation, without penalty, at any time the City deems the vendor to be non-compliant with contractual obligations.**

10. Annual Vendor Performance Review. The City reserves the right to review the vendor's performance at the end of each twelve month contract period and to cancel all or part of the agreement (without penalty) or continue the contract through the next period.

11. Compliance with other laws and certification of eligibility to contract. Any offer to contract with the City shall be considered an executed certification that the contractor will shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, (as amended during the contracting period) and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement, including without limitation, immigration laws, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. ***Additionally, such offer shall indicate that the contractor has fully read and understood the terms and conditions for eligibility to contract with the City pursuant to Chapter 38 of the City's Ordinances and certifies they are in compliance with those local requirements.*** When requested, the contractor shall furnish the City with satisfactory proof of its compliance within 10 days or any contract with the City is void.

12. Compliance with all Codes, Permitting and Licensing Requirements. The successful contractor shall comply with all national, state and local standards, codes and ordinances as well as any other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. The successful bidder shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations.

13. The City of Pflugerville may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it; (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Contractor hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Contractor hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Contractor hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade

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association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

Further, Contractor hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

14. Liability and Indemnity of City. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.. (Section 5, Article XI, Texas Constitution)

15. Indemnity and Independent Contractor Status of Contractor. To the extent of this Contract, Contractor shall indemnify, save harmless and defend the City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the contractor, its officers, agents, and employees. It is understood and agreed that the contractor and any employee or sub-contractor of contractor shall not be considered an employee of the City. The contractor shall not be within protection or coverage of the City's workers' compensation insurance, health insurance, liability insurance or any other insurance that the City from time to time may have in force and effect. City specifically reserves the right to reject any and all contractor's employees, representatives or sub-contractors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of the City, harassing, or is found to interfere with the effective and efficient operation of the City's workplace.

16. Liens. Contractor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request the contractor or subcontractors shall provide a proper release of all liens, or satisfactory evidence of freedom from liens shall be delivered to the City.

17. Confidentiality. Any provision in the Contract that attempts to prevent the City's disclosure of information that is subject to public disclosure under federal or Texas law or regulation, or court or administrative decision or ruling, is invalid. (Chapter 552, Texas Government Code)

18. Tax Exemption. The City is not liable to Vendor for any federal, state, or local taxes for which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any item. Texas limited sales tax exemption certificates will be furnished upon request. Vendors shall not charge for said taxes. If billed,

19. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

20. Sovereign Immunity. Any provision of the Contract that seeks to waive the City's immunity from suit and/or immunity from liability is void unless agreed to by specific acknowledgement of the provision within the contract.

21. Governing Law and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Travis County, Texas.

22. Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, the City may not accept or enter into a contract until it has received from the Contractor a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering the Contract.

Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 may accompany the bid, or may be submitted separately, but must be provided to the City prior to the award of the contract. Neither the City nor its consultants have the ability to verify the information included in a TEC Form 1295, and neither have an obligation nor undertake responsibility for advising any bidder with respect to the proper completion of the TEC Form 1295.

23. Limitation of Liability and Consequential Damage Disclaimer. TO THE EXTENT PERMISSIBLE BY LAW, VENDOR SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS CONTRACT IN EXCESS OF THE AMOUNT PAID BY CITY FOR THE PRODUCTS GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY VENDOR HEREUNDER, VENDOR SHALL IN NO EVENT BE RESPONSIBLE TO CITY 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. THESE LIMITS SHALL NOT APPLY TO THIRD PARTY CLAIMS BASED ON PROPERTY DAMAGE, INJURY OR DEATH. FOR THE PURPOSE OF THIS TERM, THE EQUIPMENT PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PROJECT SHALL NOT BE CONSIDERED PROPERTY AND SHALL INSTEAD BE COVERED UNDER THE TERMS OF THE WARRANTY HEREIN. THESE LIMITS SHALL NOT APPLY TO CLAIMS WHICH ARE BASED ON THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD OF THE VENDOR.

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24. Warranty. Warranty shall be in accordance with Vendor's standard warranty which is attached hereto as Exhibit "1" and hereby incorporated by reference.

25. Scope. Vendor's scope shall be in accordance with the Proposal which is attached hereto as Exhibit "2" and hereby incorporated by reference.

26. Set Off. This Contract shall be completely independent of all other contracts between the parties and all payments due to Vendor hereunder shall be paid when due and shall not be setoff or applied against any money due or claimed to be due from Vendor to City on account of any other transaction or claim.

27. Bonds. If Vendor is required to provide a Bond, in no event shall Vendor be obligated to provide a Bond for which the value exceeds the Contract price, nor a duration which exceeds the first twenty four (24) months of the warranty period.

28. Risk. Vendor shall be liable for risk until delivery. City shall be responsible for risk during unloading equipment from transport, and for risk thereafter.

29. Force Majeure. If Vendor 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 Vendor's notice in writing to City 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 City or City'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 Vendor. If the delay is the result of City's action or inaction, then in addition to an adjustment in time, Vendor 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.

30. Attorney fees. Each party to this Contract will bear its own costs and expenses, including but not limited to attorney's fees incurred in or arising out of, or in any way connected with any legal action (including arbitration) under this Contract.

CITY OF PFLUGERVILLE, TEXAS

VENDOR

By: _____

Miles Wilhelm

City Manager

Title: Sedimentation R&R Parts Manager

Date: _____

Date: 2/2/2025

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Exhibit "1"



Equipment or parts manufactured by Ovivo USA, LLC ("SELLER"), is backed by the following warranty:

Solely for the benefit of the original user, SELLER warrants that new equipment and parts manufactured by it and provided to the original user (collectively, "Products") shall be free from defects in material and workmanship for the period of one (1) year from the date of Owner acceptance not to exceed eighteen (18) months from the date of shipment by Seller (the "Warranty Period").

If any of SELLER'S Products fail to comply with the foregoing warranty, SELLER shall do one of the following:

- (a) repair or replace free of charge to original user, 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 the original user 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 the original user'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 cost of (i) returning the Product to SELLER for inspection or sending its representative to the job site, and (ii) returning the repaired or replaced Products to the original user; however, if it is determined after inspection that SELLER is not liable under this warranty, SELLER'S customer or the original user shall pay those costs; or
- (b) at SELLER'S sole option, refund all or part of the purchase price allocable to the defective Product, or parts thereof.

For SELLER to be liable with respect to this warranty, the original user must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the original user 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 the negligence or willful misconduct of SELLER'S customer or the original user, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the original user);
- (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 caused by abrasive materials 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.

It is the responsibility of SELLER'S customer or the original user to hire or retain engineers and other experts to determine the suitability of the Product for the original user's use. SELLER shall not be liable for the design or suitability of any Products for any particular use (except to the extent that a warranty or guarantee with respect to such a matter is expressly set forth in a written document executed by an authorized representative of SELLER). In making interpretations of data, SELLER'S employees will give its customer the benefit of their reasonable professional judgment as to the correct interpretation, but SELLER cannot and does not guarantee the accuracy or correctness of these interpretations (except to the extent that a warranty or guarantee with respect to such a matter is expressly set forth in a written document executed by an authorized representative of 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.

THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY PROCESS OR PERFORMANCE RELATED WARRANTIES OR 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: (1) SELLER'S CUSTOMER OR ORIGINAL USER FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS OR ANY OTHER AGREEMENT BETWEEN THE PARTIES; OR (2) SELLER'S CUSTOMER AND THE ORIGINAL USER FAIL TO PAY ANY CHARGES OTHERWISE DUE SELLER. The performance of the Products is dependent upon many factors, including the influent or feed quality and quantity, additives required, time, temperature, rates of change, sizing criteria used, operating conditions, etc. Therefore, Seller cannot assume any liability or responsibility for performance results that Buyer is expecting or has predicted. No verbal or written information or advice given by any personnel of the Seller shall create a warranty or in any way increase the scope of the warranties.

SELLER shall not be liable for any indirect, special, punitive, exemplary or consequential damages, including damages for lost production, plant shut-down, service interruptions, increased expense of operation, increased costs of power supply, loss of use of capital, lost revenue, lost product, lost profit or lost business opportunities, from any cause whatsoever, including the negligence of any person or entity.



**Worldwide Experts
in Water Treatment**

QMR7252024.02 – MW

3 FEBRUARY 2025

Pflugerville, TX Central Wastewater Treatment Plant

C60HT Replacement clarifier drive unit

PREPARED FOR:

**Dustin Paul
Pflugerville, TX
512-990-6413**

NOTE: Pricing is only valid for 30 days from date listed on proposal. Ovivo will not accept purchase orders for this proposal past that date without reviewing pricing and delivery of items proposed.

PREPARED BY

**Miles Wilhelm
Phone (801) 413-6677
Miles.wilhelm@ovivowater.com**

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

PROJECT SUMMARY:

Ovivo USA, LLC is pleased to offer the following proposal to provide one (1) Ovivo C60HT drive unit for a clarifier at Pflugerville, TX Central Wastewater Treatment Plant. This drive unit will be replacing an existing C60HT drive unit originally installed under serial number EWT0321-100

C60HT Drive Unit

Ovivo will manufacture and supply one (1) new complete model C60HT drive mechanism to include the following:

- C60HT drive
 - Motor drive package (TEFC motor, reducer, sprockets, chain and guard)
 - One (1) primary gear package
 - Includes: worm & shaft, worm gear, pinion, housing and end cap
 - One (1) main gear assembly
 - Includes: main gear, strip liners main bearing, and main gear housing. Oil bath lubricated design
 - Drive torque control unit with micro switches and actuating pin
 - Paint: two (2) coats of Tnemec Series N69F epoxy @ 6-8 mils DFT
 - Top coated with (1) coat of Tnemec Series 73 Endura Shield urethane paint @ 2-3 mils DFT (Sky Blue color)
 - Gearmotors are coated by the manufacturer
 - Completely factory assembled, calibrated and tested.
- Assembly fasteners & Shim kit (304 SS)
- Freight – FCA factory, freight allowed to jobsite
- O & M manual
- Field service checkout - Ovivo service technician visit for one (1) trip of one (1) day on site to perform checkout (start-up) and inspect C60HT drive unit installation
- One (1) year mechanical warranty for new components only - 12 months from initial operation, not to exceed 18 months from delivery.

Price for one (1) new C60HT drive unit: ~~\$112,935~~^{.00}

- Delivery of drive unit – 14-16 weeks after receipt of approved purchase order

ITEMS NOT INCLUDED

- Submittals
- Control panel
- Off-loading from delivery vehicle
- Lubricants, oil or grease, drive unit oil
- Adaptor steel (Please see Note below)
- Drive maintenance platform
- Equipment removal/demolition or installation/erection services
- Disconnection or reconnection of existing electrical items (wiring, conduits, control panels, etc.)

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- New conduit, junction boxes, wiring, circuit breakers, etc.
- Touch up painting.
- Torque testing (Ovivo cannot guarantee that a torque test will not damage the existing equipment.)

NOTES AND CLARIFICATIONS

- Unless directed otherwise, Ovivo will target an equipment design tip speed for new drives to match the rpm of the unit as it is currently being operated. This tip speed value needs to be provided or confirmed by the Owner. If an exact match of this value is not possible without schedule delays for non-standard components, we will proceed on the basis that the use of readily available standard components resulting in a similar tip speed is acceptable to the Owner.
- The design of the new components will be based on our standard engineering practices and details.
- This equipment is being provided to replace existing equipment, as described, and will be covered by our standard mechanical warranty. Please note that unless directly stated otherwise, Ovivo is not providing any sort of guarantee or warranty regarding process or performance as part of this proposal.
- This quote is based on standard components that are not explosion proof. Explosion proof components can be provided for an additional fee.

SCHEDULE & DELIVERY

Schedule and shipment lead times are based on current inventory levels and project commitments and are subject to adjustment. Expediting is possible in some cases for an additional fee. The coronavirus situation may cause disruptions in our normal business practices, capacity, and supply chain. Any schedule statements made by Ovivo at this time are our best estimate and subject to change.

However, the date of shipment of the Products represent Ovivo's best estimate, but is not guaranteed, and Ovivo 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. 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.

PRICING TERMS

All prices quoted are in US Dollars.

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 proposal. After expiration of the pricing validity period, prices and schedule 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.

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.

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.

PRICE ESCALATION

The prices submitted are based upon Purchaser's acceptance of this proposal by **February 8, 2025** not to exceed 30 days from the date of this proposal.

If a binding purchase order is not received by Ovivo prior to the above referenced date, prices and shipping dates are subject to review and adjustment by Ovivo.

Additionally, due to the unpredictability of material and labor prices and availability, including but not limited to recent sharp increases in carbon steel, stainless steel, aluminum, other metal prices, electrical components, coatings, FRP, shipping, and labor prices in the North American and worldwide markets (the "Labor and Material Price(s)"), Ovivo, shall not assume responsibility for such possible escalations and impacts to schedule beyond the validity date of its proposal or between the date of the executed Contract and the procurement of such labor and material.

Ovivo may increase the price of its proposal or require additional payment in the form of a change order due to any Labor and Material Price increase (a) that exceeds 5% per annum of the price of the specific labor or material in place on the date of Ovivo's proposal or (b) when product fabrication utilizing labor or materials does not commence until more than 6 months after the purchase order date, due primarily to actions of parties other than Ovivo. Furthermore, Ovivo is entitled to adjust its delivery date to account for such delay.

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Any Labor and Material Price increase shall be based on an industry-standard pricing measure or index for that particular labor or material that accurately represents the market increase or, at Ovivo's reasonable discretion, actual increases incurred by Ovivo. The resulting cost and schedule impact shall be disclosed to the Buyer prior to fabrication.

Notwithstanding the above, should requested shipment dates be extended primarily due to actions of parties other than by Ovivo or its suppliers, Ovivo reserves the right to charge 1.5% per month of the Contract Price for each month or partial month of delay, unless said delay is agreed to in writing by all affected parties.

Any additional duties and tariffs invoked after the date of its proposal will be added to the total proposed price.

PAYMENT TERMS

Payment terms are: One hundred percent (100%) payment due within thirty days (30) days after Purchaser's receipt of invoice. Invoice will be submitted after all materials have been received at the job site or they have been successfully installed by an Ovivo contractor and the field service check-out and start-up procedure is finalized. Credit is subject to acceptance by the Ovivo Credit Department.

Invoice will be billed at 100% of the work complete in accordance with the schedules above.

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 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 90 days, Ovivo 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.

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

TAXES

Federal, State or local sales, use or other taxes are not included in the sales price. Such

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taxes, if applicable, shall be for Purchaser's account.

BONDS

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.

Any performance and 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
Attn: Miles Wilhelm
4246 Riverboat Road, Suite 300
Salt Lake City, Utah 84123-2583
Tel. #: 801-413-6677
miles.wilhelm@ovivowater.com

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.

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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 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.

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.

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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.

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.

PERFORMANCE WARRANTY DISCLAIMER

The performance of the Products is dependent upon many factors, including, but not limited to, the influent or feed quality and quantity, additives required, time, temperature, rates of change, sizing criteria used, operating conditions, etc. Therefore, Ovivo cannot assume any liability or responsibility for performance or process results that Purchaser is expecting or has predicted. No verbal or written information or advice given by any personnel of the Ovivo shall create a warranty or in any way increase the scope of the warranties.

THE PARTIES AGREE THAT OTHER THAN ITS MECHANICAL WARRANTY SET FORTH IN THIS PROPOSAL, OR ANY PERFORMANCE WARRANTY SET FORTH ON OVIVO'S STANDARD, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY PROCESS OR PERFORMANCE RELATED WARRANTIES OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

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

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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.

Thank you for considering this proposal, and we look forward to working with you on this project.

Sincerely,

Miles Wilhelm,

Sedimentation Repair & Rebuild/Parts Manager, Municipal/Industrial

Ovivo USA, LLC

Office: 801-413-6677

Email: miles.wilhelm@ovivowater.com