



City Manager's Office

**ITEMS FOR SIGNATURE/REVIEW**

CMO LOG #: NOV-27

TODAY'S DATE: 11/18/14

③ ✓ 12/9/14 ⊕

Assigned to: L. FELDMAN  S. HAWTHORNE  S. TORRIENTE

Title of Document for Signature: Proprietary purchase of services  
#parts to repair hydrotreater #1 @ fiveash  
Water Treatment Plant with Ovivo USA, LLC

Memo/Doc # (if applicable): 14-1367 PM-7 Date of Doc.: 11-4-14

Document received from: Procurement Vote Summary: 5/0

- APPROVED FOR LEE FELDMAN'S SIGNATURE
- PENDING APPROVAL (See comments below)
- N/A FOR L. FELDMAN TO SIGN

2014 NOV 18 PM 1:41  
CITY MANAGER

PER ASSISTANT CITY MANAGER:

S. HAWTHORNE \_\_\_\_\_ or S. TORRIENTE \_\_\_\_\_  
(Initial and date above) (Initial and date above)

Rejection/Questions/Additional Information Request: 11/20

Please leave this routing form attached  
to these agreements so the Clerk's office  
Comments/Tracking Information: Knows who to return them to.  
Wendy - pls return (or call) these agreement(s)  
to me in Procurement. Thank you.  
Elizabeth!!



**PREPARED FOR**

**City of Fort Lauderdale  
Fort Lauderdale Five Ash Water Plant  
Fort Lauderdale, FL**

**AREA REPRESENTATIVE**

TSC-Jacobs  
Tampa, FL. 33626  
Todd Rubens  
**(813) 888-5556**  
[todd@tscjacobs.com](mailto:todd@tscjacobs.com)

**PROJECT:**

**Refurbishment of an Existing 55' dia.  
Dorrco Hydrotreator #1  
Serial # 40657 Year: 1960**

**PREPARED BY**

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

Terry A. Reyburn  
Phone (801) 931-3239  
Fax (801) 931-3090  
[terry.reyburn@ovivowater.com](mailto:terry.reyburn@ovivowater.com)

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**PROPOSAL**

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## PROJECT SUMMARY:

Ovivo, USA LLC. Formerly, Eimco Water Technologies (EWT) is pleased to offer this proposal to rebuild an existing 55' dia. Dorrco Hydrotreator, serial # 40657, originally installed in 1960 #1. We have also provided pricing for installation services.

The scope of work is based on a recent site visit evaluating the Hydrotreator #1 and similar scope of work that was performed on tank No. 3 &4.

Ovivo will manufacture and supply one (1) set of following components:

- Center column adapter, 304SS
- Center drum, 304SS
- Add a small ladder and platform to the bottom of the sludge well. (similar to tank 4)
- Distribution arms (4) per tank with 45 degree sideway baffled nozzles SS
- Blades, SS
- Guy rods, tie rods and turnbuckles, SS
- Vent pipes – 3 ½", SS
- Line pipes 3" dia. The end of the pipe to end on a 45 degree angle (all four arms), SS.
- Weirs (3/16" PL in 304SS)
- Radial effluent through, SS
- Launder supports, SS
- Donut launder with weirs, SS
- Sludge well, SS
- Center scrapers, SS
- Mechanism Support from walkway, SS
- Gaskets
- Wall baffles & brace, SS
- C40PHTS Drive unit with precision bearing and 70,000 FT lbs of torque, similar design to tank No. 4. Motor drive components suitable for VFD operation, shear pin sprocket, push button station control panel with reverse capabilities and shutoff, reset switches. The control integration and set up is by others and should be performed by City electrician. C40PLTS drive can be used without the VFD controls. Includes a torque transmitter.
- Includes control panel with VFD similar to tank 4.
- Existing anchors to be reused. We will supply a few 316SS epoxy anchors just in case they are needed. (we will inspect the existing anchors bolts in making sure they are in good condition, if not they will be replaced with new SS anchor bolts, we do not want to drill into the concrete unless necessary)
- Freight to jobsite.
- Engineering and drawings
- Operation and maintenance manuals (2)
- 2 year warranty.

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## PROPOSAL

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**All Steel material to be 304SS.**

**We will ship all products in accordance to the proposed schedule.**

**Items NOT included:**

- Walkway, handrail and grating to be re-used. We will repair and prep and paint the walkway only.
- Influent piping (24" dia.)
- Electrical starter, conduit, lampposts, etc.
- Pipe connection hardware, pipe supports, valves or fittings.
- Mastic, adhesives, dissimilar metals protection, tape, etc.
- Concrete work
- Concrete column to be re-used
- Applicable tax, surcharges, fees, licenses, etc.

**Labor Services:**

Ovivo will supply supervision, labor, service and equipment necessary to complete the rebuild project as described below. Ovivo will subcontract the labor installation portion to an authorized Ovivo contractor Turning Water Industries.

We include:

- Site mobilization
- Removal of the existing mechanism
- Removal of walkway to be blasted and painted and re-used. Handrail and grating to be re-used. Also to replace fasteners if needed. (freight included)
- Furnish and install temporary slurry troughs
- Inspect anchor bolts- install new ones if needed.
- Install slurry troughs in permanent location
- Install chemical feed lines in permanent location
- Hauling and disposal of old equipment (debris)
- Erection and installation support of superstructure as needed
- Crane, mats, rigging and related equipment (130 ton)
- Demobilization of personnel and equipment.
- Rake and drive re-leveling- using tie rods. Includes welding, shims and leveling plates as needed.
- Lubrication for drive units, NSF Food grade only (initial start-up only)
- Lime scale build-up removal in the bottom of the tank

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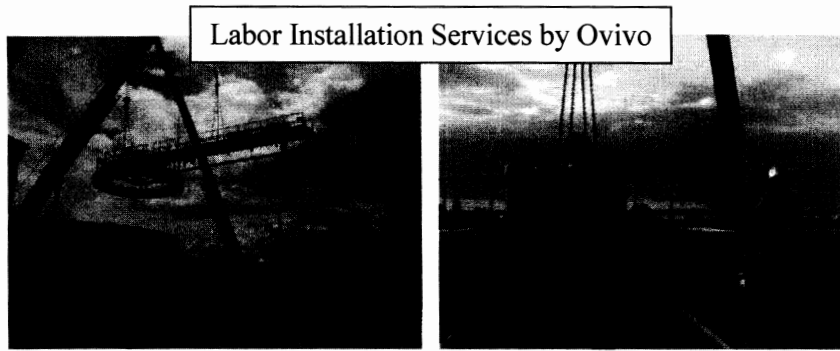
**P R O P O S A L**

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- One shift, 10 hours per day (no overtime included)
- Ovivo will verify all dimensions during pre-engineering site visit.
- Field service – three trips (1-2 days on site per trip)
- Note: we will start the removal process immediately so we can inspect the influent piping making sure it does not need replacement.

We do not include:

- Draining, cleaning and filling of tank (customer is responsible for making sure the tank is drained and cleaned prior to mobilization)
- Electrical connections or disconnection.
- Relocation of lime slurry distribution is not needed for tank #4.



**Pricing Summary:**

Materials as described above in 304SS and labor installation services .....\$704,235.00

Note: Includes lime scale build-up removal.

Lead-time is 16-20 weeks for engineering and fabrication. Installation services approx. 4-5 weeks.

**DELIVERY**

Ovivo 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 represents 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. If such delivery is prevented or postponed by reason of Force Majeure, as defined in Ovivo's standard terms and conditions of sale, Ovivo shall be entitled at its option to

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**PROPOSAL**

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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 within sixty (60) days following notice from Ovivo that the Products are ready for shipment. Reasonable 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. Prices are good for 90 days. After expiration of the pricing effective period, prices will be subject to review and adjustment. Prices quoted are FOB (freight on board) destination, with freight included to an accessible point to the Five Ash Water Treatment Plant. Federal, state or local sales, use or other taxes are not included in the sales price.

### **PAYMENT TERMS**

Payment terms are: One hundred percent (100%) payment due within sixty (60) days after Purchaser's receipt of proper invoice. Invoice will be submitted after all materials have been received at the job site and 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.

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 sixty (60) days after Purchaser's receipt of invoice. Overdue and unpaid invoices are subject to interest in accordance with the Florida Local Government Prompt Payment Act.

If Purchaser requests or causes cancellation, suspension or delay of Ovivo's work, Purchaser shall accept transfer of title and pay Ovivo a reasonable portion of the contract price in proportion to the amount of conforming work completed up to the date of the cancellation, suspension, or delay. . Additionally, in such event all charges related to and risks incidental to storage, disposition and/or resumption of work shall be borne solely by Purchaser. Full payment for all work shall be due and payable sixty (60) days from the date work is placed into storage.

### **TAXES**

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## **PROPOSAL**

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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 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.



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  
4255 Lake Park Blvd., Suite 100,  
Salt Lake City, Utah 84120  
Fax #: 801-931-3080  
Tel. #: 801-931-3000  
Karen.haddow@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 one (1), 8 hour day. 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 or any of Ovivo's subcontractors' scope of work.

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**PROPOSAL**

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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 it at the current rate for each additional day required, plus travel and lodging expenses incurred by the service personnel during the additional service days in accordance with the Purchaser's Travel Allowance and Subsistence Policy.

### **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 or Purchaser's painting contractor after mechanism erection.

Clarifier motors, gear motors and center drives shall be cleaned and painted by Ovivo 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 ensure 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, piping, valves, stairways, wall spools, concrete, grout, dissimilar metal protection, oakum, mastic or protection against corrosion due to unprotected storage at Purchaser's location, special engineering, or overall plant or system operating instructions or any other products or services.

### **MANUALS**

The content of any and all installation, operation and maintenance or other manuals or documents pertaining to the Products, excluding this Agreement and any other record that is a public record pursuant to Florida law, are copyrighted and shall not be modified without

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## **P R O P O S A L**

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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.

Attachments:

Ovivo USA, LLC General Terms and Conditions, QFORMEWT 0115-02031 Rev H  
Ovivo USA 2010 North American Field Service Rate Schedule

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**PROPOSAL**

Ovivo USA, LLC  
4255 Lake Park Blvd. • Suite 100 • Salt Lake City, Utah 84120-8201 USA  
Tel: (801) 931-3000 • Fax: (801) 931-3080  
[www.ovivowater.com](http://www.ovivowater.com)

**1. ACCEPTANCE.** The proposal of **OVIVO USA, LLC** ("SELLER"), as well as these terms and conditions of sale (collectively the "Agreement"), constitutes SELLER's contractual offer of goods and associated services, and PURCHASER's acceptance of this offer is expressly limited to the terms of the Agreement. The scope and terms and conditions of this Agreement represent the entire offer by SELLER and supersede all prior solicitations, discussions, agreements, understandings and representations between the parties.

**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 within sixty (60) days following notice from SELLER that the Products are ready for shipment. Reasonable 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.

**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 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 at PURCHASER's location.

**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 in accordance with the Florida Local Government Prompt Payment Act shall apply. The non-prevailing party in litigation following any and all appeals is liable to pay the prevailing party's reasonable legal fees and all other reasonable litigation costs in respect of Seller's enforcing or attempting to enforce any of SELLER's rights relating to a breach or threatened breach of the payment terms by PURCHASER.

**5. TAXES.** Unless otherwise specifically provided in SELLER's quotation/proposal, PURCHASER shall pay, in addition to the price, for all applicable 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 applicable 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 twenty four (24) months from startup of the equipment not to exceed thirty (30) months from shipment. If any of SELLER's Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, FOB jobsite 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 reasonable costs, any travel being in accordance with Purchaser's Travel Allowance and Subsistence Policy. 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. PAINTING.** The Products shall be painted in accordance with SELLER'S standard practice, and purchased items such as motors, controls, speed reducers, pumps, etc., will be painted in accordance with manufacturers' standard practices, unless otherwise agreed in writing.

**8. DRAWINGS AND TECHNICAL DOCUMENTATION.** When PURCHASER requests approval of 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.

**9. 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.

**10. 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, reasonable assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the PURCHASER against such claims of infringement and any ensuing settlement, judgment, fine, penalty, and other expense. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the PURCHASER the right to continue using the Products, (b) replace the same with non-infringing Products, (c) modify the Product so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, 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.

**11. DEFAULT TERMINATION.** In the event that PURCHASER becomes insolvent, files a voluntary petition for protection under any chapter of the bankruptcy laws of the United States, or defaults in the performance of any material 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 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 reasonable expenses of such sale and all reasonable expenses of retaking possession, repairs necessary to put the Products in saleable condition, storage charges, taxes, collection and legal fees and all other reasonable 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. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.

**12. CANCELLATION.** PURCHASER may terminate this Agreement for convenience upon giving SELLER thirty (30) days prior written notice of such fact and paying SELLER for a reasonable portion of the contract price in proportion to the amount of the portion of conforming work completed up to the date of termination. All such costs and expenses shall be paid to SELLER within ten (10) days of the termination of the Agreement, or be subject to interest in accordance with the Florida Local Government Prompt Payment Act.

**13. 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.

**14. INSPECTION.** PURCHASER is entitled to make reasonable inspection of Products at SELLER's facility.

**15. 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.

**16. 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 SELLER'S expense.

**17. FORCE MAJEURE.** If SELLER is rendered unable, wholly or in material part, 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, 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 not caused by SELLER, 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 reasonable costs incurred to maintain its schedule.

**18. 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 venturers or employees of PURCHASER in any way whatsoever.

**19. SEVERABILITY.** Should any portion of this Agreement, be held to be invalid or unenforceable under applicable law by a court of competent jurisdiction 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.

**20. CHOICE OF LAW, CHOICE OF VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to its rules regarding conflicts or choice of law. The parties submit to the jurisdiction and venue of the state and federal courts located in Broward County, Florida, and the Southern District of Florida, respectively.

**21. ASSIGNMENT.** Neither party shall assign or transfer this Agreement without the prior written consent of the other party. Any attempt to make such an assignment or transfer shall be null and void. SELLER shall be freely allowed to subcontract any portion of work required to comply with the terms of this Agreement, and Purchaser permission shall not be required or withheld in the event of such subcontracting. Seller shall remain wholly responsible for any work performed by any of Seller's subcontractors.

**22. LIMITATION ON LIABILITY, TO THE EXTENT PERMISSIBLE BY LAW, SELLER SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE COST OF CORRECTING ANY DEFECTS, OR IN THE ABSENCE OF ANY DEFECT, IN EXCESS OF THE VALUE OF THE PRODUCTS SOLD HEREUNDER. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY SELLER HEREUNDER, SELLER SHALL IN NO EVENT BE RESPONSIBLE TO PURCHASER, 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, 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.**

**23. SCRUTINIZED COMPANIES.**

Subject to *Odebrecht Construction, Inc. v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc. v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this section applies to any contract for goods or services of \$1 million or more:

The SELLER certifies that it is not on the scrutinized companies with activities in Sudan list or the scrutinized companies with activities in the Iran petroleum energy sector list and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The PURCHASER may terminate this contract at the PURCHASER'S option if the SELLER is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the scrutinized companies with activities in Sudan list or the scrutinized companies with activities in the Iran petroleum energy sector list or has been engaged in business operations in Cuba or Syria, as defined in section 287.135, Florida Statutes (2013), as may be amended or revised.

## PROPOSAL

OVIVO USA, LLC  
4255 Lake Park Blvd. • Suite 100 • Salt Lake City, Utah 84120-8201 USA  
Tel: (801) 931-3000 • Fax: (801) 931-3080  
www.ovivowater.com

**24. PUBLIC RECORDS.**

SELLER shall:

- A) keep and maintain public records that ordinarily and necessarily would be required by the PURCHASER in order to perform the service.
- (b) provide the public with access to public records on the same terms and conditions that the PURCHASER would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida statutes (2013), as may be amended or revised, or as otherwise provided by law.
- (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) meet all requirements for retaining public records and transfer, at no cost, to the city, all public records in possession of the SELLER upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the PURCHASER in a format that is compatible with the information technology systems of the PURCHASER.

**25. INSURANCE.**

The SELLER shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the PURCHASER as "additional insured" shall be at the SELLER's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the SELLER to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The SELLER's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the PURCHASER's Risk Manager. Any exclusions or provisions in the insurance maintained by the SELLER that excludes coverage for work contemplated in this agreement shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance  
Limits: Workers' Compensation - Per Chapter 440, Florida Statutes  
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

Crane and Rigging Insurance will be provided for any crane operations under the Commercial General or Auto Liability policy as necessary, in line with the limits of the associated policy.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000 per occurrence and \$2,000,000 aggregate.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors
- f. Waiver of subrogation in favor of the City

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury and property damage - \$1,000,000 combined single limit

Certificate holder should be addressed as follows:

City of Fort Lauderdale  
Procurement Services Division  
100 North Andrews Avenue, Room 619  
Fort Lauderdale, FL 33301.

**26. INDEMNIFICATION.**

Solely to the extent of Seller's fault (or the fault of any officer, employee, agent, invitee, subcontractor, or sublicensee of the SELLER), SELLER shall protect and defend at SELLER's expense, counsel being subject to the PURCHASER's approval, and indemnify and hold harmless the PURCHASER and the PURCHASER's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the SELLER or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the SELLER. The provisions and obligations of this section shall survive the expiration or earlier termination of this agreement. To the extent considered necessary by the PURCHASER'S city manager, any sums due SELLER under this agreement may be retained by PURCHASER until all of PURCHASER'S claims for indemnification pursuant to this agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by PURCHASER.

REVISION DATE - MARCH 5, 2009

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# PROPOSAL

Ovivo USA, LLC

4255 Lake Park Blvd. • Suite 100 • Salt Lake City, Utah 84120-8201 USA

Tel: (801) 931-3000 • Fax: (801) 931-3080

www.ovivowater.com

IN WITNESS WHEREOF, SELLER and PURCHASER execute this Agreement as follows:

ATTEST:

Jonda K. Joseph  
Jonda K. Joseph, City Clerk

PURCHASER:  
CITY OF FORT LAUDERDALE

By: John P. "Jack" Seiler  
John P. "Jack" Seiler, Mayor

By: Lee R. Feldman  
Lee R. Feldman, City Manager

Approved as to form:

Paul Banzel  
Senior Assistant City Attorney

WITNESSES:

Lisa Powers

Print Name:

Lisa Powers

Print Name:



(Seal)

STATE OF Utah  
COUNTY OF Salt Lake

SELLER:  
Ovivo USA, LLC

By: Valere Morissette

Print Name: Valere Morissette  
Manager

ATTEST:

By: Craig Christensen  
Print Name: Craig Christensen  
Senior Legal Counsel / Manager

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of November, 2014, by Valere Morissette as manager for Ovivo USA, LLC, a Delaware limited liability company authorized to transact business in the State of Florida.

**PROPOSAL**

(SEAL)



*Keni Layton*  
Notary Public, State of Utah  
(Signature of Notary Public)

*Keni Layton*  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



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**PROPOSAL**

**NORTH AMERICAN  
FIELD SERVICE RATE SHEET**

Effective January 2013

Standard (Travel)	Daily Rate (8 hour day)	\$ 1,200.00
Hourly Rate (4 hour minimum)		\$ 150.00
Standard (Labor)	Daily Rate (8 hour day)	\$ 1,200.00
Hourly Rate (4 hour minimum)		\$ 150.00
Saturday	Daily Rate (8 hour day)	\$ 1,800.00
Hourly Rate (4 hour minimum)		\$ 225.00
Sundays/Holidays *	Daily Rate (8 hour day)	\$ 2,400.00
Hourly Rate (4 hour minimum)		\$ 300.00
Overtime **	Hourly Rate - Standard Day	\$ 225.00
Hourly Rate - Weekends & Holidays		\$ 300.00

\* Except Christmas Day and New Years Day

\*\* For all hours worked over eight (8) hours per day

**UNLESS OTHERWISE ARRANGED; EXPENSES ARE CHARGED AT ACTUAL COST PLUS 10%**

Please Note:

- All of the rates provided are portal to portal. In addition, travel and living expenses will be invoiced in accordance with PURCHASER's Travel Allowance and Subsistence Policy and documentation will be provided for these expenses. *If a fixed Per Diem rate is required, it will be charged at \$250.00 per day (lodging and meals) with the exception of the East Coast where the price will be \$300.00.* Travel on Saturday, Sunday or Holidays, and after 8 hours per day will be billed at the overtime rate.
- Use of **Ovivo** Fleet vehicles for travel will be charged at the rate of \$0.565 per mile.

**PROPOSAL**



