

### Amendment to PO Term & Conditions

In the event of conflict between the Purchase Order documents and the Amendment herein, the terms of the Amendment shall control. The parties are City of Cocoa ("Buyer") and Ovivo USA, LLC ("Seller").

#### Limitation of Liability and Consequential Damage Disclaimer

To the extent permissible by applicable law, Seller shall have no further liability in connection with this Contract in excess of the cost of correcting any defects, or in the absence of any defect, in excess of the value of the equipment supplied hereunder. However, notwithstanding any other provision of the Purchase Order to the contrary, in no event shall Seller be liable for any punitive, exemplary, special, incidental, or consequential loss or damage suffered by Buyer, or any other party, in connection with this Purchase Order.

#### Indemnity

Any and all indemnity obligations of Seller in connection with this Purchase Order shall be limited to the extent of to its negligence or willful misconduct.

City of Cocoa  
("Buyer")

By: 

Name: Stockton Whitten

Title: City Manager

Date: January 12, 2021

Ovivo USA, LLC  
("Seller")

By: 

Name: Tom Leland

Title: Vice President

Date: 08 December 2020

**JERRY SELLERS WRF  
375 N. COCOA BLVD.  
COCOA, FLORIDA 32922**

**(ONE) 110'-0 DIA. CLARIFIER NO: 1  
MECHANISM ALIGNMENT, FIELD ADJUSTMENT  
AND SKIMMING DEVICE REPLACEMENT**

**AREA REPRESENTATIVE**

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TSC Jacobs-North  
Joe Sacco  
(904) 524-9576  
joetscjr@gmail.com

**PREPARED BY:**

Bill Stewart  
Phone (801) 931-3265  
Fax (801) 931-3080  
bill.stewart@ovivowater.com

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



**PROJECT SUMMARY:**

Ovivo USA, LLC (formerly EIMCO Water Technologies – EWT) is pleased to offer the following proposal to provide one (1) clarifier adjustment and skimming device replacement including installation services to repair the existing Ovivo clarifier installed under serial #CSW754-01.

**ITEMS INCLUDED:**

- Complete skimming device assemblies (2 per tank). Aluminum/Neoprene.
- Scum box supports (2 required), carbon steel with 2 coats shop paint. New anchors and hardware.
- Assembly fasteners – 304 stainless steel.
- One (1) year warranty - two (2) year warranty with Ovivo installation.
- Engineering
- FOB ship point freight prepaid and allowed

**(REMOVAL AND INSTALLATION SERVICES):**

We Include:

- Site mobilization.
- Florida State General Contractor CGC1523752
- Skimmer repairs.
  - Cutting and welding skimmer to correct orientation.
  - Installation of (2) new replacement skimming devices.
  - Installation of new scum box supports and alignment of existing scum box.
- Rake arm adjustment.
  - Marking level elevation for set up.
  - Shimming rake arms as needed.
  - Re-welding rake arm connections
  - Adjustment of existing squeegees.
- Field verification of existing floor elevations, including written report.
- Demolition and disposal of the existing equipment as described above.
- Service truck, mats, rigging and related equipment
- Two (2) year warranty parts & installation
- Demobilization of personnel and equipment
- 10 hours per day

**Items NOT Included**

- Any bonds and/or permits (if required), including but not limited to building permits
- Draining or cleaning of tank prior to start of installation
- Removal and/or disposal of any plant waste
- Electrical disconnect/installation or alteration of existing electrical supply
- Overtime work hours or removal of old debris

**Price for installation and labor services for (1) one complete as described above: \$44,950.00**

Lead time is estimated at 4 weeks for equipment manufacture as described above

Lead time is estimated at 1 week for installation services as described above

**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 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. If such delivery is prevented or postponed by reason of Force Majeure, as defined in Ovivo's standard terms and conditions of sale, Ovivo shall be entitled at its option to tender delivery to Purchaser at the point or points of manufacture, and in default of Purchaser's acceptance of delivery, to cause the Products to be stored at such a point or points of manufacture at Purchaser's expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this proposal. If shipment is postponed at request of Purchaser, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from Ovivo that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by Ovivo with respect to the Products shall be for the account of Purchaser and shall be paid by Purchaser when invoiced.

**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 shipment, with freight included to an accessible point nearest the jobsite. Federal, state or local sales, use or other taxes are not included in the sales price.

**PAYMENT TERMS**

Payment terms are: One hundred percent (100%) payment due within forty five (45) 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.

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 forty five (45) days after Purchaser's receipt of invoice. Overdue and unpaid invoices are subject to a service charge of 2% per month until paid.

If Purchaser requests or causes cancellation, suspension or delay of Ovivo's work, Purchaser shall accept transfer of title and pay Ovivo all appropriate charges incurred up to date of such event plus Ovivo's overhead and reasonable profit. Additionally, 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 forty five (45) 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 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:

Attn: Order Entry Administrator  
Ovivo USA, LLC  
4246 Riverboat Road - Suite 300,  
Salt Lake City, Utah 84123-2583  
Fax #: 801-931-3080  
Tel. #: 801-931-3265  
[bill.stewart@ovivowater.com](mailto:bill.stewart@ovivowater.com)

### **GENERAL ITEMS NOT INCLUDED**

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

storage, special engineering, or overall plant or system operating instructions or any other products or services.

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

#### **WARRANTY AND CONDITIONS**

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





Worldwide Experts in Water Treatment

## TERMS AND CONDITIONS OF SALE

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

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

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

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

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

**6. MECHANICAL WARRANTY.** Solely for the benefit of PURCHASER, SELLER warrants that new equipment and parts manufactured by it and provided to PURCHASER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from startup of the equipment not to exceed eighteen (18) months from the earliest of the notice of readiness to ship or the actual shipment. If any of SELLER's Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER's job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER; however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER's negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) any Products that have been altered or repaired in any way without SELLER's prior written authorization; (iii) The costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage bells 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 tiff format only.

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

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

**12. PATENT INDEMNITY.** SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER's Product hereunder 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 non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and PURCHASER shall indemnify SELLER for, any claim of infringement related to (a) the use of the Products for any purpose other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the Products in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

REVISED - March 2020

		<h2 style="text-align: center;">Exemption to Competitive Purchase</h2>			
		<p>An Exemption to Competitive Purchase shall be approved before routing the purchase requisition for purchases expected to total less than \$35,000 in one fiscal year. This form shall be used to justify Emergency, Single-Source, Sole-Source and Standardization purchases.</p>			
<b>SECTION A: General</b>					
Date: 11/30/20	Account: 421-4120-536.46-00	Amount Requested: \$ 44,950.00			
Dept/Div: 4055 Utilities/Engineering	Requester: David Veloza, E.I.	Quote Attached:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Vendor (Name, Phone, Email)	Ovivo USA, LLC	Emergency Purchase:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is Vendor Original Equipment Manufacturer (OEM)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Single Source Purchase (If YES, attach no quote from vendor or email attempt to justify use of single source selection)		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Can multiple vendors provide the same or salient product / service?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Sole Source Purchase (If YES, attach vendor memo, letterhead, stating sole source of product / service with OEM dealer, distributor, reseller authorization)		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is this purchase or project to be capitalized?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Standardization Purchase (If YES, provide detailed description, attach supporting documentation if applicable)		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<b>SECTION B: Justification</b>					
<p>Use section to provide a detailed explanation of services or products and why an exemption to competitive purchase is justified. Include the purpose of the services or products and how it directly impacts department operations.</p>					
Product or Service Description (Include Model / Part No., if applicable)	Sellers Clarifier #1 Mechanism Alignment, Field Adjustment and Skimming Device Replacement.				
Describe purpose of product or service.	To repair the Clarifier #1 Skimming Arm Mechanism and Scum Box supports.				
What features of product or service makes this unique and exceptional to other comparable products or services?	Ovivo was the manufacturer of the clarifier mechanism and replacement parts are to be purchased from them.				
If applicable, describe why this product or service is compatible to existing equipment, instrumentation or services. If not enter N/A.	Ovivo is the Original Equipment Manufacturer (OEM). We did a very similar repair to the other Clarifier (Clarifier #2) at Sellers in 2019, under a Sole Source Purchase from Ovivo.				
If applicable, is this purchase in effort to support standardization of equipment or services? Provide description of how it will benefit department or operations. If not enter N/A.	N/A				
<b>SECTION C: Justification of Due Diligence</b>					
<p>Use this section to document effort to identify other sources of product or services. This section does not apply for Emergency Products or Services.</p>					
Brief description of efforts made to resource other providers of product or services.	Although there are other manufacturers that offer clarifier mechanisms, Ovivo's system cannot be replicated by other vendors while maintaining the warranty of the skimming arm.				
Describe consequence to operations if exemption is not declared.	The plant's operating capacity will be severely impacted as it will only be operating on one out of two clarifiers.				
How will department or program function if product or service is discontinued?	The plant may have to replace the entire rake arm mechanism which will be very costly.				
Describe how pricing was determined to be most responsive, responsible and best value to department.	Ovivo are the only ones that can work on repairing this design.				
<p>Florida Statute 838.22(2), BRIBERY, MISUSE OF PUBLIC OFFICE, which applies to public servants working for municipal government agencies, reads as follows: "It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another by circumventing a competitive solicitation process required by law or rule through the use of a</p>					
Requesting Department Director Approval	John "Jack" Walsh	Digitally signed by John "Jack" Walsh Date: 2021.01.06 11:43:58 -05'00'		1/7/21	
Purchasing Manager Approval	Heath Hancher	Digitally signed by Heath Hancher Date: 2021.01.07 12:38:52 -05'00'		1/7/21	
Finance Director Approval	Rebecca Bowman	Digitally signed by Rebecca Bowman Date: 2021.01.08 08:32:36 -05'00'			
Finance Staff Comments					



### Amendment to PO Terms & Conditions

In the event of conflict between the Purchaser Order documents and the Amendment herein, the terms of the Amendment shall control. The parties are City of Cocoa ("Buyer") and Ovivo USA, LLC ("Seller").

#### Limitation of Liability and Consequential Damage Disclaimer

To the extent permissible by applicable law, Seller shall have no further liability in connection with this Purchaser Order in excess of the cost of correcting any defects, or in the absence of any defect, in excess of the value of the equipment supplied hereunder. However, notwithstanding any other provision of the Purchaser Order to the contrary, in no event shall Seller be liable for any punitive, exemplary, special, incidental, or consequential loss or damage suffered by Buyer, or any other party, in connection with this Purchaser Order.

#### Indemnity

Any and all indemnity obligations of Seller in connection with this Purchaser Order shall be limited to the extent of to its negligence or willful misconduct.

City of Cocoa  
("Buyer")

By: 

Name: John A. Titkanich, Jr.,  
AICP, ICMA-CM

Title: City Manager

Date: 2/06/19

Ovivo USA, LLC  
("Seller")

By: 

Name: VALERIE MORISSETTE

Title: Sanwa Vee President

Date: 1-28-2019.

## Carie Shealy

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**From:** Maria Arenas-Daza  
**Sent:** Wednesday, February 06, 2019 8:56 AM  
**To:** Carie Shealy  
**Cc:** Sonja Hamilton; Norma Hernandez; Kristoffer Smith  
**Subject:** Sellers clarifier arm - City manager approval  
**Attachments:** Amendment to PO terms.pdf; A Proposal.pdf; 912 - City of Cocoa.pdf; 15857623.pdf; Revised Amendment to Jerry Sellers WRF TC's.pdf; SS-UT-Ovivo (11-14-18) - Approved.pdf; FW: Jerry Sellers WRF -- Clarifier Receptor T's & C's; RE: Jerry Sellers WRF - Clarifier Repair

Carie,

Sellers needs to repair a damaged skimmer arm for Clarifier 2. For this, I obtained an approved sole-sourced proposal from Ovivo for **\$30,088.00**. Ovivo's original terms & conditions (T&Cs) were not accepted by our attorney (Anthony Garganese) and thus Ovivo submitted an amendment with revised items for their T&Cs. Ovivo also submitted a revised COI that addresses Anthony's concerns.

Could you please ask the City Manager to sign the attached **amendment to the PO terms** so we can get this project moving forward?

I have attached the proposal, sole source form, the revisions of the T&Cs amendment, the revised COI, Anthony's e-mail explaining his concerns which were amended, and an e-mail from Sonja explaining her approval of Ovivo's amendments.

However, please do not hesitate to contact me if you have any questions.

Thanks,

*Mia Arenas*

City of Cocoa  
Utilities Associate Engineer  
(321) 423-0780

## Carie Shealy

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**From:** Sonja Hamilton  
**Sent:** Monday, February 04, 2019 10:15 AM  
**To:** Maria Arenas-Daza  
**Subject:** FW: Jerry Sellers WRF -- Clarifier Receptor T's & C's  
**Attachments:** Amendment to PO terms.pdf; A Proposal.pdf; Revised Amendment to Jerry Sellers WRF TC's.pdf; 912 - City of Cocoa.pdf; 15857623.pdf

Mia,

In order to accept the amendment (attached), including the changes to the Limitation of Liability and Consequential Damages Disclaimer we originally objected to (see below), a Certificate of General Liability naming City of Cocoa additionally insured with respects to GL and Workman's comp must accompany the Amendment for the City Manager's Signature. I find the other changes acceptable and in accordance with the Attorney's opinion.

*Limiting a contractor's liability only to correcting defects or the value of equipment installed is not acceptable. The Contractor should submit an insurance certificate covering general liability and assuming the certificate meets the City's minimum requirements and is acceptable, the City should, at the very least, be protected by contractor's insurance coverage. Again, it is not acceptable in my view to contractually limit the City's ability to recover damages if the contractor is negligent on the job. Stricken. COI for general Liability and Workman's Comp must be submitted before PO can be issued.*

--*Sonja*

**Sonja Hamilton**

**Purchasing & Contracts Manager**

65 Stone St., Cocoa, FL 32922

(321) 433-8833 | shamilton@cocoafl.org

Fax: (321) 433-8860

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**From:** Maria Arenas-Daza  
**Sent:** Friday, February 01, 2019 8:43 AM  
**To:** Sonja Hamilton <shamilton@cocoafl.org>  
**Subject:** FW: Jerry Sellers WRF -- Clarifier Receptor T's & C's

Sonja,

Could you please review the attached amendment and verify that it fits the attorney's requirements? Let me know if you have any questions. Thank you very much!

*Mia Arenas*

City of Cocoa

Utilities Associate Engineer

(321) 423-0780

**From:** Paul Wachter [mailto:paultscjn@verizon.net]  
**Sent:** Thursday, January 31, 2019 2:28 PM  
**To:** Maria Arenas-Daza <marenas@cocoafl.org>  
**Subject:** Fwd: Jerry Sellers WRF -- Clarifier Receptor T's & C's

Mia:

Are these the documents you needed?

Paul C Wachter  
TSC Jacob's North  
[paultscjn@verizon.net](mailto:paultscjn@verizon.net)  
813-242-2660: Office  
813-997-1527: Cell