

COUNCIL AGENDA STATEMENT

Meeting Date: May 10, 2022
To: Honorable Mayor and Council Members
From: Dan Saus, Utility Director
Through: George Garrett, City Manager



Agenda Item: **Resolution 2022-39** Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of two Eqovua, DAVCO, Forty-X Disc filters for Service Area 7 WWTP In An Amount Not To Exceed \$707,950.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

BACKGROUND & JUSTIFICATION:

We are so satisfied with the performance of the Forty-X disc filters previously installed we would like to purchase an additional two for the Service Area 7 WWTP. These filters are a considerable upgrade from the existing sand filter technology. This new disc filter technology increases through put while reducing back wash which increases efficiency considerably.

Additional ACOE funding became available to the City this fiscal year and this purchase is reimbursable through the ACOE Florida Keys Water Quality Improvement Program (FKWQIP) agreement dated October 14, 2008.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other –Sewer Mandate	_____	_____

FISCAL NOTE:

While this project was not contemplated during the FY22 budget process, this project qualifies for reimbursement from the Army Corps of Engineers.

RECOMMENDATION:

Approve Resolution

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-39**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A “SOLE SOURCE” PURCHASE PURSUANT TO THE CITY’S PURCHASING POLICIES AND PROCEDURES AND APPROVING THE PURCHASE OF TWO EVOQUA FORTY-X DISC FILTERS FROM EVOQUA WATER TECHNOLOGIES, LLC, IN AN AMOUNT NOT TO EXCEED \$707,950.00; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT IN CONNECTION THEREWITH, APPROPRIATING AND EXPENDING BUDGETED FUNDS WHICH WILL BE SUBMITTED FOR REIMBURSEMENT FROM THE ACOE FKQWIP AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 2015-04, the City adopted purchasing policies and procedures (the “Purchasing Policies and Procedures”) after determining that it was fiscally prudent and in the City’s best interest to adopt policies and procedures for City employees and officials regarding the acquisition and purchase of contractual services, equipment, goods, and other similar types of services; and

WHEREAS, the Purchasing Policies and Procedures allow the City Council to enter into contracts for materials, supplies, equipment, public improvements or services without competitive bidding by utilizing existing contract terms and prices entered into by other local, state or federal governmental authorities that followed a competitive bidding procedure leading to the award of the contract in question; and

WHEREAS, the City desires to take advantage of the Sole Source purchasing procedure, to purchase two Evoqua Forty-X filters for Service Area 7 WWTP in an amount not to exceed \$707,950.00, which will be submitted for reimbursement from the ACOE FKQWIP grant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby authorizes the City Manager to enter into an agreement and expend budgeted funds on behalf of the City two Evoqua Forty-X filters in an amount not to exceed \$707,950.00

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10th DAY OF MAY, 2022.

THE CITY OF MARATHON, FLORIDA

Mayor John Bartus

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Steve Williams, City Attorney

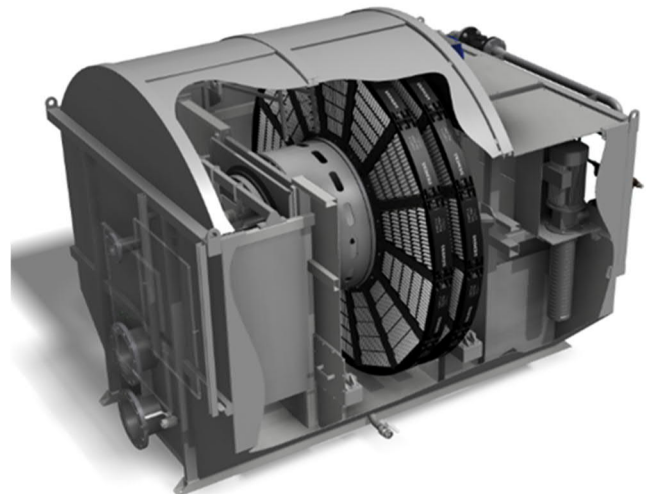
FIRM PROPOSAL

AREA 7 DISC FILTERS MARATHON, FL

Quotation No: 00501470 – 4/12/2022

Questions related to this Proposal should be directed to Evoqua's area sales representative:

Alex Maas
Heyward Florida Incorporated
415 Country Club Dr
Winter Park, FL 32789
C: (407)948-4191
amaas@heywardfl.com



To: City of Marathon
Bid Date: 4/12/2022

1. SUMMARY

Evoqua Water Technologies LLC (Evoqua) proposes to furnish the equipment specified in this Quotation in accordance to the scope of supply described in this quotation and subject to the Clarifications/Exceptions and Standard Terms of Sale stated herein.

Addenda received: None

The information in this quotation is confidential and/or proprietary and has been prepared solely for the recipient's use in considering the purchase of the equipment and/or services described herein. Transmission of all or any part of this information to others, or use by the recipient, for other purposes is expressly prohibited without Evoqua's prior written consent.

ITEM & DESCRIPTION	PRICE
Disc Filter 304SS MOC	<u>\$599,950 USD</u>
Adder for 316SS MOC	<u>\$108,000 USD</u>
Total: \$707,950 USD	

Evoqua's price includes only the specific items detailed in this quotation. Items not specifically identified herein are to be furnished by others. Please refer to the excluded items in Section 4 of this quotation for a list of items to be furnished by others.

A. OPTIONS: An order for items quoted as an extra cost option, if any, will be accepted only when included with the basic equipment order.

B. FREIGHT: Pricing is FCA shipping point with standard freight allowed to the job site. Our price does not include any costs for unloading, transporting on the site, phased shipments or storage.

C. QUOTATION VALIDITY: This quotation is valid for a period of thirty (30) days unless extended in writing by Evoqua. Due to current raw material price fluctuation, Evoqua reserves the right to re-quote the equipment proposed herein after that time.

Due to volatility in material costs, prices quoted in this proposal will be adjusted to reflect changes in the Metal and Metal Products Index (MMPI) published by the U.S. Department of Labor, Bureau of Labor Statistics. The most recent published MMPI is 327.734 for 2/1/2022. If the MMPI exceeds 327.734 at the time the Equipment is released for manufacture, then the price will be increased by the same percentage as the MMPI exceeds 327.734.

Further Evoqua's price does not account for increased costs, delays and inefficiencies associated with current regulations and guidelines concerning COVID-19. Should these, or any additional, restrictions be implemented by any governing body, the CDC, or the customer or user of the Equipment to address COVID-19, Evoqua reserves the right to request a change order to the extent its costs or time for performance are increased by additional restrictions.

D. FIELD SERVICES: Evoqua's pricing includes the services of a factory field service technician for checking the installed equipment and instruction of Owner's personnel; all of which shall be performed over a total of one (1) trip with two (2) days on site.

Category	Trips	Days on Site
Mechanical	1	2
Total	1	2

E. SERVICE MANUALS: Our pricing includes an electronic version of the operation and maintenance (O&M) manual as an Adobe PDF file format only. If requested, Evoqua will supply hard copies of the service manual at the customers expense. Drawings will be supplied in an unchangeable TIF, bitmap, or PDF file format only. The rights to the content of Evoqua O&M manuals and drawings belong solely to Evoqua and Evoqua reserves the right to make changes to content at any time.

F. PAYMENT AND PRICE TERMS: The terms of payment are net 30 in accordance with the following milestones:

- 10% on drawing submittal delivery.
- 85% on shipment of equipment, or offer to ship;
- 5% on startup of equipment or 120 days from final delivery, whichever occurs first.

G. CANCELLATION POLICY: If Evoqua is issued an order and the Buyer cancels or suspends its order for any reason other than Evoqua's breach, the Buyer shall promptly pay Evoqua for work performed prior to cancellation or suspension and any other costs incurred by Evoqua as a result of such cancellation or suspension. At a minimum, cancellation after executed contract will result in a cancellation fee of 10% of the total order value.

Evoqua's prices are exclusive of any taxes. If this project is not subject to sales or use tax, please issue a Tax-Exempt Certificate with any ensuing purchase order (P.O.). If applicable, please provide a copy of payment bond information with the P.O. With no exemption or if this project is subject to sales or use tax, the Purchaser will be invoiced for taxes at the then-current rate of sales, use or other tax for the jobsite location.

2. DRAWING AND SHIPPING INFORMATION

Evoqua will furnish shop drawing submittals and equipment per the following project schedule:

- Submittal Drawings: Within Four (4) to Six (6) weeks from the date of final agreement by both parties.
- Submittal Drawing Reviews/Approvals: Within Four (4) weeks from Evoqua's delivery of Submittal Drawings.
- Shipment of Equipment: Within Fourteen (14) to Sixteen (16) weeks after approval of Submittal Drawings.

Evoqua has provided typical standard times and shipment dates. Actual times will be provided upon receipt of a Purchase Order based upon current backlog. Evoqua will work closely with the General Contractor and/or Engineer to provide delivery dates to meet the overall project schedule as possible.

If Submittal Drawing Reviews/Approvals are not received by Evoqua in accordance with the project schedule noted above, Evoqua shall be entitled to a reasonable extension of the *Shipment of Equipment* times and/or a reasonable increase in the contract price to cover costs incurred because of Submittal Drawing Review/Approval delays unless the delay is the fault of Evoqua.

3. EQUIPMENT SCOPE

The following equipment and services are included in Evoqua's scope of work:

No.	Description	Quantity
1.	E1403TLSS & E1403TRSS	2
2.	Control Panel per each unit	2
3.	Spares – Filter Panels	4
4.	Spares - Spray Nozzles	20
5.	Spare strainer elements	2

Process Performance Requirements:

Avg. Daily Flow:	0.6	mgd
Peak Daily Flow:	1.2	mgd
Influent Avg. TSS:	10	mg/l
Influent Peak TSS:	20	mg/l
Effluent TSS:	5	mg/l

Forty-X Filter Sizing and Selection:

Number of Filters:	2	(1 duty, 1 standby)
Filter Model Number:	E1403T	
Avg. Hydraulic Loading Rate:	3.09	gpm/ft ²
Avg. Solids Loading Rate at Avg. Flow:	0.37	lbs/ft ² /day
Max Solids Loading Rate at Avg. Flow:	0.74	lbs/ft ² /day
Peak Hydraulic Loading Rate:	6.18	gpm/ft ²
Avg. Solids Loading Rate at Peak Flow:	0.74	lbs/ft ² /day
Max Solids Loading Rate at Peak Flow:	1.48	lbs/ft ² /day

Forty-X Filter Specs:

Submergence:	65%	
Effective Filter Surface Area	135	ft ² / filter
Drum Rotational Speed	1-3	rpm
Drum Drive Motor	2	Hp, 480V, 3ph, 60Hz
Backwash Pump	33	gpm at 100+ psi
Backwash Pump Motor	5	Hp, 480V, 3ph, 60Hz

Material of Construction:

Filter Tank	304	SS
Central drum	304	SS
Sliding Cover	304	SS
Filter Cloth	316SS	
Filter Panel Box	ABS / PPE	
Backwash Trough	304	SS
Spray Manifold	304	SS

4. EXCLUDED ITEMS

The price from Evoqua includes only those items listed in this Quotation. The items listed below are excluded:

- Civil works and all building modifications or construction to house the filtration unit system equipment including all concrete work related with construction, grouting of equipment and else as applicable.
- Unloading, unpacking, storage (according to Evoqua's recommendation), installation, assembly and field erection of the Forty-X disc filter system.
- Interconnecting pipework between the disc filter units, between the disc filter units and the ancillary equipment, between the disc filter units or ancillary equipment and equipment Supplied By Others and between the ancillary equipment.
- Pipe support including pipe hangers for all piping supplied outside the disc filter units.
- Pneumatic lines supplying air to the pneumatic actuators.
- Floor drains.
- Safety showers.
- Bench scale or pilot testing
- Backwash waste holding tank or connection of the backwash outlet of each disc filter unit to sewer or other appropriate receiving system.
- Chemical transfer systems for services other than related to the chemical cleaning of the disc filters.
- Supply and storage of all chemicals required for disc filter media cleaning, maintenance, and/or operation.
- SCADA system.
- Supply and installation of all VFDs, motor control centers, and disconnects, unless otherwise specified.
- Supply and installation of all control wiring, power cabling including cabling tray, conduits, fittings and supports as necessary.
- Installation of control panels not associated with the disc filters.
- Building power, lighting, main disconnect, power distribution.
- Instrumentation not specifically listed in the Evoqua scope as specified herein.
- Equipment Freeze Protection
- Underwriters Laboratory inspection of electrical controls
- Any necessary bid bonding requirements
- Any other items not explicitly indicated in this proposal

5. CLARIFICATIONS/EXCEPTIONS

The equipment specified herein shall conform to the specification sections referenced in Section 1 of Evoqua’s Quotation to the extent they are technically applicable to Evoqua’s scope of supply as described in this Quotation and subject to the following clarifications:

Article, Section	Clarifications/Proposed Modifications

Evoqua’s standard terms and conditions, including without limitation Evoqua’s warranty obligations in Article 7 govern the purchase and sale of equipment, products, and related services, referred to in Evoqua’s proposal. Evoqua’s offer or acceptance is expressly conditioned on Buyer’s assent to these terms. Evoqua rejects all additional or different terms in any of Buyer’s forms or documents.

The Influent and Effluent criteria listed in the Bid Documents was used as the basis of design for equipment selection. Evoqua makes no express or implied performance warranty by offering equipment under this specification, unless specifically included in Evoqua’s proposal. System performance may be impacted by factors outside of Evoqua’s control. These factors may include but are not limited to site conditions including variation in flows and loadings, operator inputs, temperature, pH, toxic or inhibitory substances, and failure or limitations of other unit processes.

6. ADDITIONAL FIELD SERVICES

Should the Purchaser feel that additional services will be required, they can be purchased from Evoqua. Additional services may be purchased at the per diem rate stated below.

Evoqua’s price does not include service of a factory field service technician during the time of installation of the equipment items.

In the event Purchaser wishes to videotape the Evoqua field service personnel during start-up and/or field service, Purchaser must execute Evoqua’s standard “Videotape Agreement” in which the Purchaser shall expressly waive any claim against Evoqua, for injury or damage caused by inaccuracies or errors in such videotape(s), and acknowledge that such videotaping is done by Purchaser at its sole risk.

TERMS GOVERNING FIELD SERVICES: Services of a factory field service technician to inspect installation and/or first operation of the products specified in the quotation can be furnished by Evoqua at the following rates:

- A. Supervision or consultation of a process service technician within the continental limits of the United States: \$1,400 per eight (8) hour day, Monday through Friday inclusive.
- B. Supervision or inspection of a field service technician within the continental limits of the United States: \$1,200 per eight (8) hour day, Monday through Friday inclusive. Overtime Monday through Friday and Saturday work is charged at time and one-half. Time worked on Sunday will be charged double time; time worked on U.S. Holidays will be charged triple time.

- C. Traveling, living and incidental expenses at cost, including shipping charges on tools and other equipment which the factory field service technician has shipped to the construction site.
- D. Travel time will be charged to and from Purchaser's construction site, and weekend or holiday travel request or required by Purchaser will be charged at the overtime rates.
- E. Rescheduling or cancellation of a field service trip once booked will incur the greater of either a \$1,500 cancellation or re-scheduling charge, or actual costs.

Rates shown above apply only to additional services performed within twelve (12) months from the date of Quotation. Additional services performed after twelve (12) months from the date of Quotation shall be subject to Evoqua's current rates at the time such service is provided. Except for the direct acts or omissions of the factory field service technician, the responsibility for the installation and/or first operation shall be Purchaser's. Evoqua will assume responsibility for workmen's compensation coverage of Evoqua employees only and will provide umbrella liability coverage during installation. All other insurance coverage and necessary materials to accomplish installation shall be provided by Purchaser.



QUOTATION SUBMITTED BY EVOQUA WATER TECHNOLOGIES LLC

Signature below indicates acceptance of this quotation including the Standard Terms of Sale attached hereto and will act as the purchase order document between Evoqua Water Technologies LLC, the Seller, and the Buyer. The Standard terms of Sale shall form the complete and only set of terms for this order.

Accepted by Buyer:

Acknowledged by Seller:

Company

Evoqua Water Technologies LLC

Company

Printed Name

Printed Name

Title

Title

Signature

Signature

Date

Date

Billing Address

Evoqua Water Technologies LLC

Address

Shipping Address

Please submit the signed proposal to TWEL@evoqua.com along with the Billing Address, Shipping Address, Tax-Exempt Certificate, and a Copy of Payment. It is clarified that the purchase order price does not include sales tax and that sales tax is to be added to the sale price unless the Seller receives a Tax-Exempt Certificate or Resale Certificate.

EVOQUA WATER TECHNOLOGIES LLC

STANDARD TERMS OF SALE

1. **Applicable Terms.** These terms govern the purchase and sale of equipment, products, related services, leased products, and media goods if any (collectively herein "Work"), referred to in Seller's proposal ("Seller's Documentation"). Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is expressly conditioned on Buyer's assent to these terms. Seller rejects all additional or different terms in any of Buyer's forms or documents.

2. **Payment.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted.

3. **Delivery.** Delivery of the Work shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are Ex Works Seller's factory (Incoterms 2010). Title to all Work shall pass upon receipt of payment for the Work under the respective invoice. Unless otherwise agreed to in writing by Seller, shipping dates are approximate only and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer or Buyer's customer if Seller fails to meet the specified delivery schedule.

4. **Ownership of Materials and Licenses.** All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely for Buyer's use of the Work. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer grants Seller a non-exclusive, non-transferable license to use Buyer's name and logo for marketing purposes, including but not limited to, press releases, marketing and promotional materials, and web site content.

5. **Changes.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance.

6. **Force Majeure Event.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed prior to the date of termination. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Seller or its sub-suppliers, natural catastrophes or (with respect to on-site work), unusual weather conditions.

7. **Warranty.** Subject to the following sentence, Seller warrants to Buyer that the (i) Work shall materially conform to the description in Seller's Documentation and shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Buyer shall be the sole and exclusive responsibility of Buyer. The foregoing warranty shall not apply to any Work that is specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which (i) Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller and (ii) Seller shall have no other liability to Buyer under warranty, tort or any other legal theory. The Seller warrants the Work, or any components

thereof, through the earlier of (i) eighteen (18) months from delivery of the Work or (ii) twelve (12) months from initial operation of the Work or ninety (90) days from the performance of services (the "Warranty Period"). If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Seller, (i) Buyer shall be responsible for any labor required to gain access to the Work so that Seller can assess the available remedies and (ii) Buyer shall be responsible for all costs of installation of repaired or replaced Work. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller its then customary charges for any repair or replacement made by Seller. Seller's warranty is conditioned on Buyer's (a) operating and maintaining the Work in accordance with Seller's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to Seller. Seller's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Seller) and (ii) media goods (such as, but not limited to, resin, membranes, or activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

8. **Indemnity.** Seller shall indemnify, defend and hold Buyer harmless from any claim, cause of action or liability incurred by Buyer as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim.

9. **Assignment.** Neither party may assign this Agreement, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in the Agreement and/or assign proceeds of the agreement without Buyer's consent.

10. **Termination.** Either party may terminate this agreement, upon issuance of a written notice of breach and a thirty (30) day cure period, for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of this agreement). If Buyer suspends an order without a change order for ninety (90) or more days, Seller may thereafter terminate this Agreement without liability, upon fifteen (15) days written notice to Buyer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.

11. **Dispute Resolution.** Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to this Agreement or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then **any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Pittsburgh, Pennsylvania before three arbitrators** who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Seller and Buyer. **The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision** of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

12. **Export Compliance.** Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Work provided under this Agreement, including any export license requirements. Buyer agrees that such Work shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such export laws and regulations be

maintained at all times. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

14. **Rental Equipment / Services.** Any leased or rented equipment ("Leased Equipment") provided by Seller shall at all times be the property of Seller with the exception of certain miscellaneous installation materials purchased by the Buyer, and no right or property interest is transferred to the Buyer, except the right to use any such Leased Equipment as provided herein. Buyer agrees that it shall not pledge, lend, or create a security interest in, part with possession of, or relocate the Leased Equipment. Buyer shall be responsible to maintain the Leased Equipment in good and efficient working order. At the end of the initial term specified in the order, the terms shall automatically renew for the identical period unless canceled in writing by Buyer or Seller not sooner than three (3) months nor later than one (1) month from termination of the initial order or any renewal terms. Upon any renewal, Seller shall have the right to issue notice of increased pricing which shall be effective for any renewed terms unless Buyer objects in writing within fifteen (15) days of issuance of said notice. If Buyer timely cancels service in writing prior to the end of the initial or any renewal term this shall not relieve Buyer of its obligations under the order for the monthly rental service charge which shall continue to be due and owing. Upon the expiration or termination of this Agreement, Buyer shall promptly make any Leased Equipment available to Seller for removal. Buyer hereby agrees that it shall grant Seller access to the Leased Equipment location and shall permit Seller to take possession of and remove the Leased Equipment without resort to legal process and hereby releases Seller from any claim or right of action for trespass or damages caused by reason of such entry and removal.

15. **Miscellaneous.** These terms, together with any Contract Documents issued or signed by the Seller, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") and supersede any terms contained in Buyer's documents, unless separately signed by Seller. No part of the Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. No course of dealing or performance, usage of trade or failure to enforce any term shall be used to modify the Agreement. To the extent the Agreement is considered a subcontract under Buyer's prime contract with an agency of the United States government, in case of Federal Acquisition Regulations (FARs) flow down terms, Seller will be in compliance with Section 44.403 of the FAR relating to commercial items and those additional clauses as specifically listed in 52.244-6, Subcontracts for Commercial Items (OCT 2014). If any of these terms is unenforceable, such term shall be limited only to the extent necessary to make it enforceable, and all other terms shall remain in full force and effect. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws provisions. Both Buyer and Seller reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.

May 2015