

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-37**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, WAIVING THE CITY'S PURCHASING POLICIES AND PROCEDURES AND APPROVING A SOLE SOURCE PURCHASE OF WASTEWATER TREATMENT MEMBRANE REPLACEMENT FOR SERVICE AREA 5 FROM OVIVO USA, LLC, IN AN AMOUNT NOT TO EXCEED \$690,170.00; AUTHORIZING THE CITY MANAGER TO EXECUTE PURCHASE ORDERS EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance 2015-14, the City Council of the City of Marathon, Florida (the "City"), adopted Purchasing Policies and Procedures after determining that it was fiscally prudent and in the best interests of the City's residents for the City to adopt policies and procedures for City employees and officials regarding the purchasing and acquisition of contractual services, equipment, goods, professional services and other similar types of services; and

WHEREAS, in accordance with Section 2-183 and 2-184(F), the City may waive competitive bidding procedures to obtain goods and services which cannot be acquired through the normal purchasing process, and in this case, where only one vendor possesses the unique and singularly available capability to meet the requirement for wastewater equipment and supplies which are in the City's best interest; and

WHEREAS, the City's wastewater treatment plants and collection systems consist of specialized equipment requiring products and supplies for repairs and maintenance by specified vendors, and Ovivo USA LLC is the sole source of the replacement membranes for the City's wastewater treatment plant, as provided by Exhibit "A", which are distributed solely by Ovivo USA LLC; and

WHEREAS, the City Manager recommends the City Council waive the City's purchasing policies and procedures due to the sole source status of the vendor, Ovivo USA LLC, in an amount not to exceed \$690,170, as provided on Exhibit "A" for the replacement membrane for Service Area 5.

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 are incorporated herein by this reference.

Section 2. Based upon the recommendation of the City Manager the City Council finds that sole source vendor purchases of specialized equipment requiring products and supplies for repairs and maintenance of the City's wastewater treatment systems is in the best interest of the City and approves the purchase.

Section 3. The City's purchasing policies and procedures are hereby waived and the City Council hereby approves sole source purchase of membrane replacement from Ovivo USA, LLC for the City's wastewater treatment plant five. The City Manager is hereby authorized to execute a purchase with Ovivo USA, LLC as described in the proposal attached hereto as Exhibit "A," and expend budgeted funds.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 26TH DAY OF APRIL, 2016.

THE CITY OF MARATHON, FLORIDA



Mayor Mark Senmartin

AYES: Bartus, Coldiron, Kelly, Zieg, Senmartin
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



David Migut, City Attorney



Dan Saus, Utilities Director
City of Marathon Utilities Department
3305 Overseas Highway
Marathon, FL 33850

April 13th, 2016

RE: Firm Proposal for Membrane Replacement - City of Marathon MBR WWTP Service Area 5

Dear Mr. Saus:

Thank you for allowing Ovivo the opportunity to provide firm pricing to replace all of the existing membrane units at your Service Area 5 MBR WWTP. Our experienced team is poised to immediately assist with finalizing the engineering package and coordinate with your team for installation in September 2016.

Scope Overview (Scope of Supply Attached)

Ovivo will provide the following equipment and services as part of this firm proposal:

- Twelve (12) OV480 membrane modules to replace all of the existing membrane modules. Each existing MBR basin will be outfitted with four (4) OV480 membrane modules. All internal pipes, supports, brackets, fittings, hoses, valves, hardware, etc. shall be included for a complete system.
- Removal of existing membrane units and installation of new OV480 membrane units and commissioning services.
- One (1) membrane lifting tool for membrane removal.
- One (1) membrane access platform for easy access to membrane modules and isolation valves.
- PLC controls programming modifications
- Engineering design services and coordinating with FDEP on record drawings as required.

City of Marathon will provide the following services:

- Crane and operator for removal of existing membrane units and installation of new membrane units.
- Disposal of existing membrane units as required.
- Wash down inside of MBR tankage prior to installation.
- Any interconnecting wiring between existing MBR plc control panel and Vacuum Sewer control panel.

Firm price for Ovivo scope of supply and services is \$690,170.

Please indicate your agreement with the above terms by signing and returning two (2) copies of this Agreement to Ovivo, attention Esther Saler at 2404 Rutland Drive, Austin, Texas 78758.



Dan Saus, Utilities Director

Accepted for City of Marathon, FL:

Date: 4-27-16

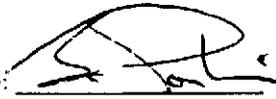
Signature: 

Print Name: CHARLES LINDSEY

Title: CITY MANAGER

Accepted for Ovivo:

Date: 4/27/16

Signature: 

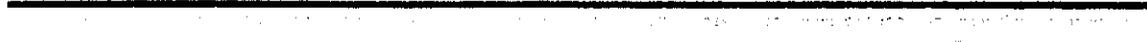
Print Name: JIM PORTEOUS

Title: V.P. and G.M.

Thank you again and please feel free to contact our local rep John McLaughlin of MTS at 904-347-7979, or myself, for additional information.

Sincerely,

Damone Supica, PE
2404 Rutland Drive
Austin Texas, 78758 U.S.A.
Tel: 865-429-2002
Cell: 865-466-0088
Fax: 512-834-6039
Email: damone.supica@ovivowater.com



MBR Zone General Equipment Information

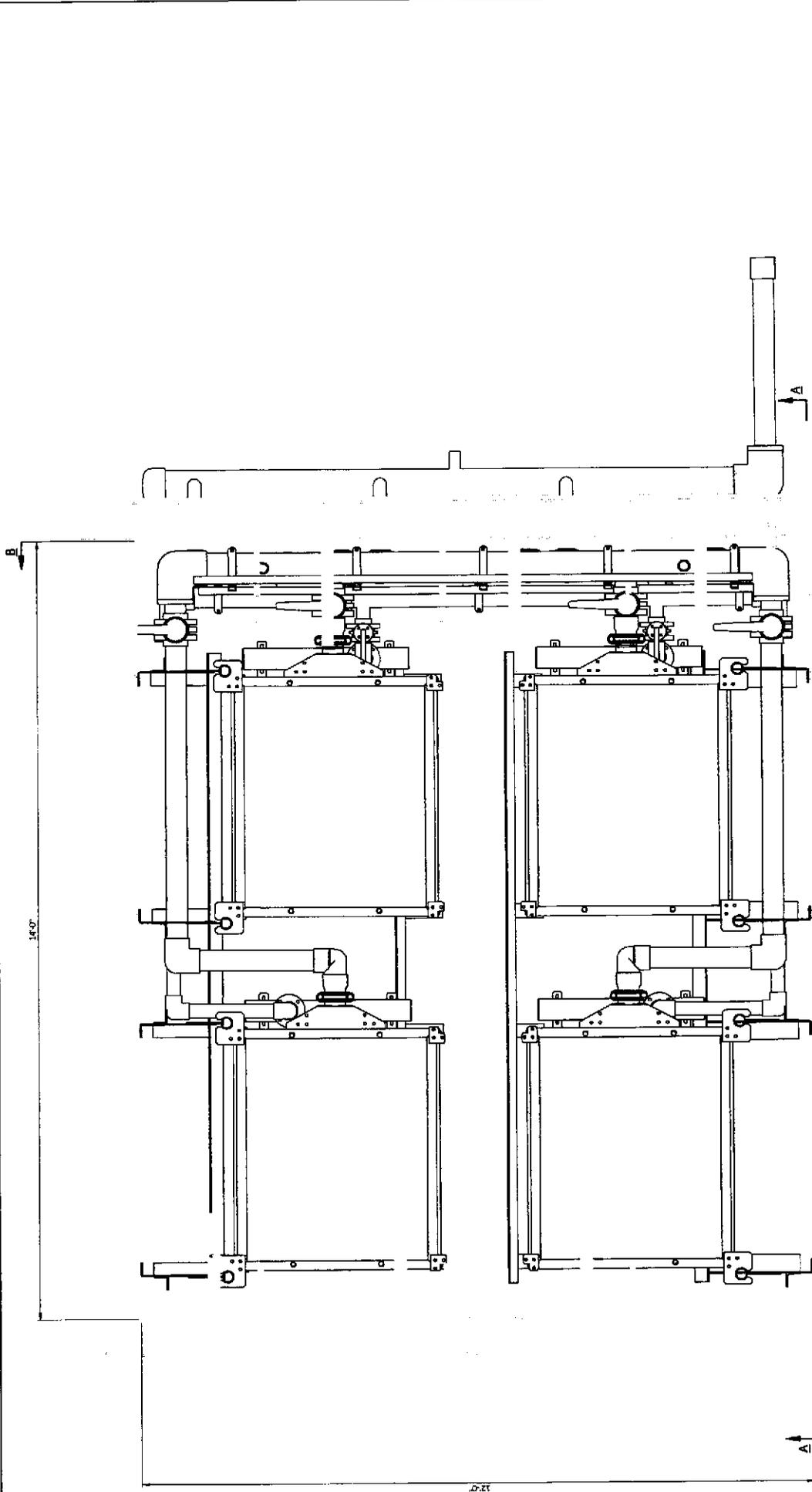
Function	Name	Type	Size or Unit Capacity	Value	Material	Manufacturer	Model or Specification	Motor HP	QTY
MEMBRANE FILTRATION	OVIVO MEMBRANE UNIT	FLAT SHEET	N/A	N/A	SS	OVIVO	OV480	N/A	12
DIFFUSER CIP	AUTOMATED VALVE	SOLENOID	1.5	Inch	BRASS	ASCO	TBD	N/A	3
CHEMICAL CLEANING ISOLATION	VALVE	BALL	2	inch	PVC	ASAHI	1601-020	N/A	5
FABRICATION	FASTENERS	N/A	N/A	N/A	S5304	OVIVO	N/A	N/A	12
FABRICATION	OVIVO UMK LIFTING TOOL	N/A	N/A	N/A	S5304	OVIVO	N/A	N/A	1
FABRICATION	OVIVO UMK PLATFORM	N/A	N/A	N/A	S5304	OVIVO	N/A	N/A	1
FABRICATION	IN-BASIN PIPING & SUPPORTS FOR OMUs	N/A	N/A	N/A	S5304	OVIVO	N/A	N/A	12

Controls General Equipment Information

Function	Name	Type	Size or Unit Capacity	Value	Material	Manufacturer	Model or Specification	Motor HP	QTY
PLANT CONTROL	SCADA	Add Vacuum Sewer inputs	N/A	N/A	N/A	WONDERWARE	N/A	N/A	1
PLANT CONTROL	PLC PANEL	Minor Programming Modifications as required	N/A	N/A	N/A	N/A	N/A	N/A	1

Miscellaneous General Equipment Information

Function	Name	Type	Size or Unit Capacity	Value	Material	Manufacturer	Model or Specification	Motor HP	QTY
PROJECT KICKOFF MEETING	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1
MECHANICAL INSPECTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3
START-UP / COMMISSIONING / TRAINING	N/A	N/A	20	days	N/A	N/A	N/A	N/A	1
QC & INSPECTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1
SHIPPING & RECEIVING	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1
INBOUND FREIGHT	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1
OUTBOUND FREIGHT	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1



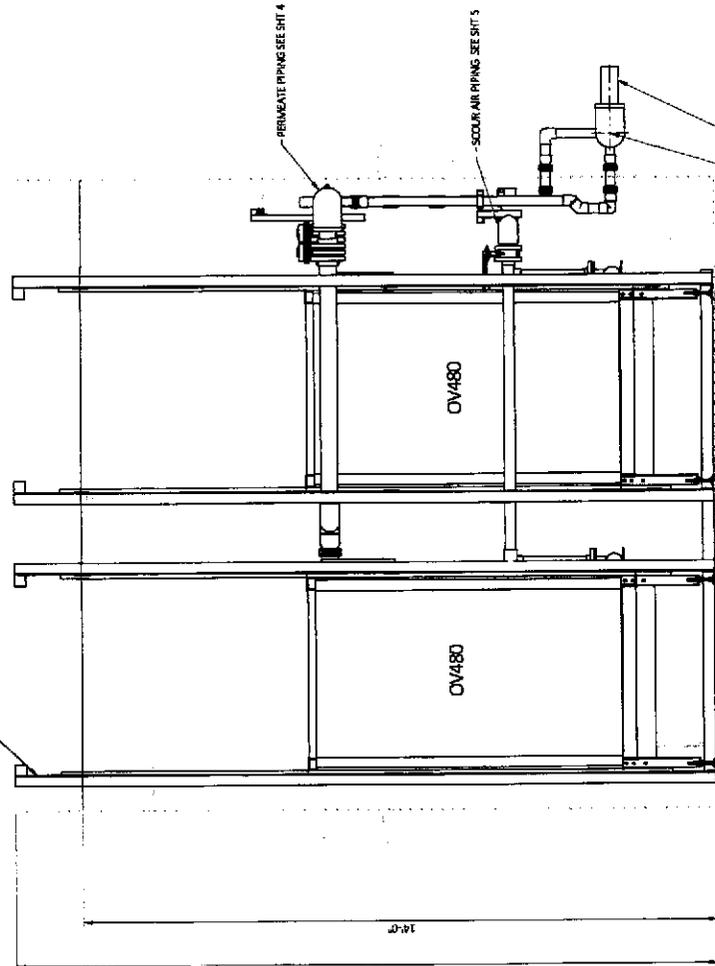
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NOT FOR CONSTRUCTION

D		TITLE BLOCK INFORMATION THIS DRAWING IS THE PROPERTY OF THE ENGINEER OR ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER OR ARCHITECT.	
		SHEET FROM: 2/19/2016 DATE: 1/11/2016 DRAWN BY: [Name] CHECKED BY: [Name]	DO NOT SCALE PRINTS www.ovivo.com ORIGINAL S.D.

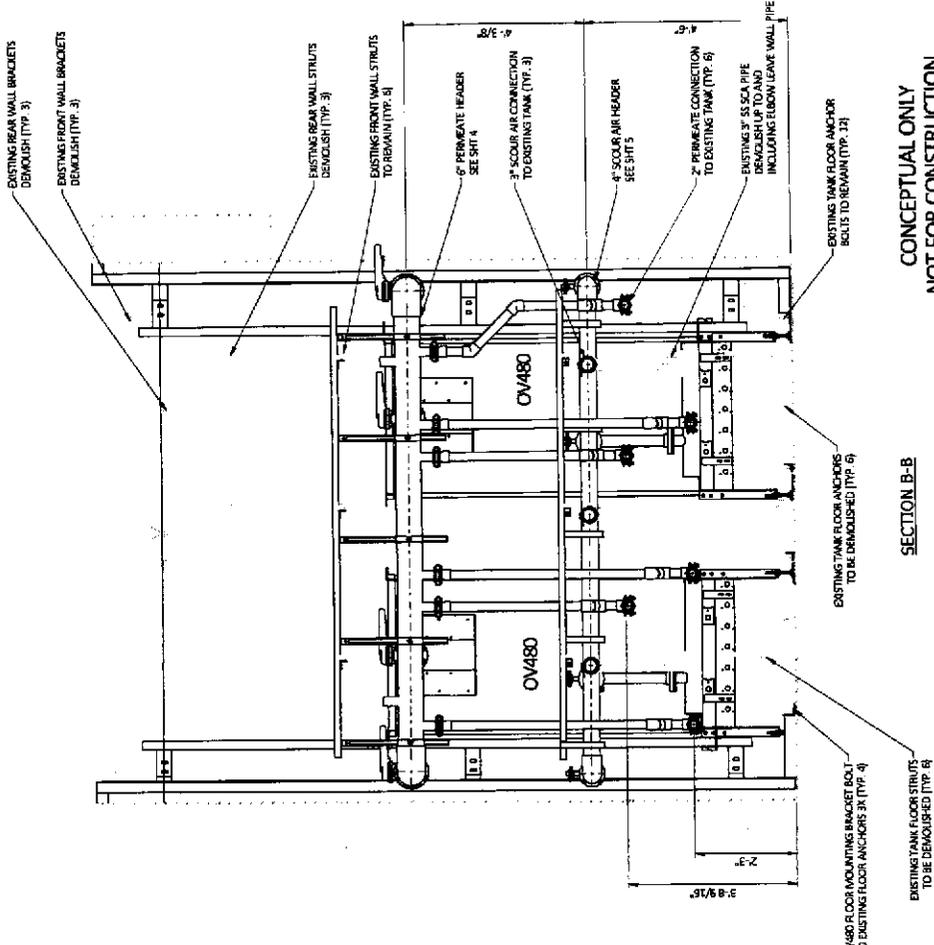
OVIVO
 Worldwide expertise in Water Treatment
 LITTLE VERTICE PARK WWTTP
 HANATRON FL USA
 OW480 UPGRADE MBR BASIN LAYOUT

PLAN VIEW

OV480 GUIDE PIPE & SUPPORTS SEE SHIT 6



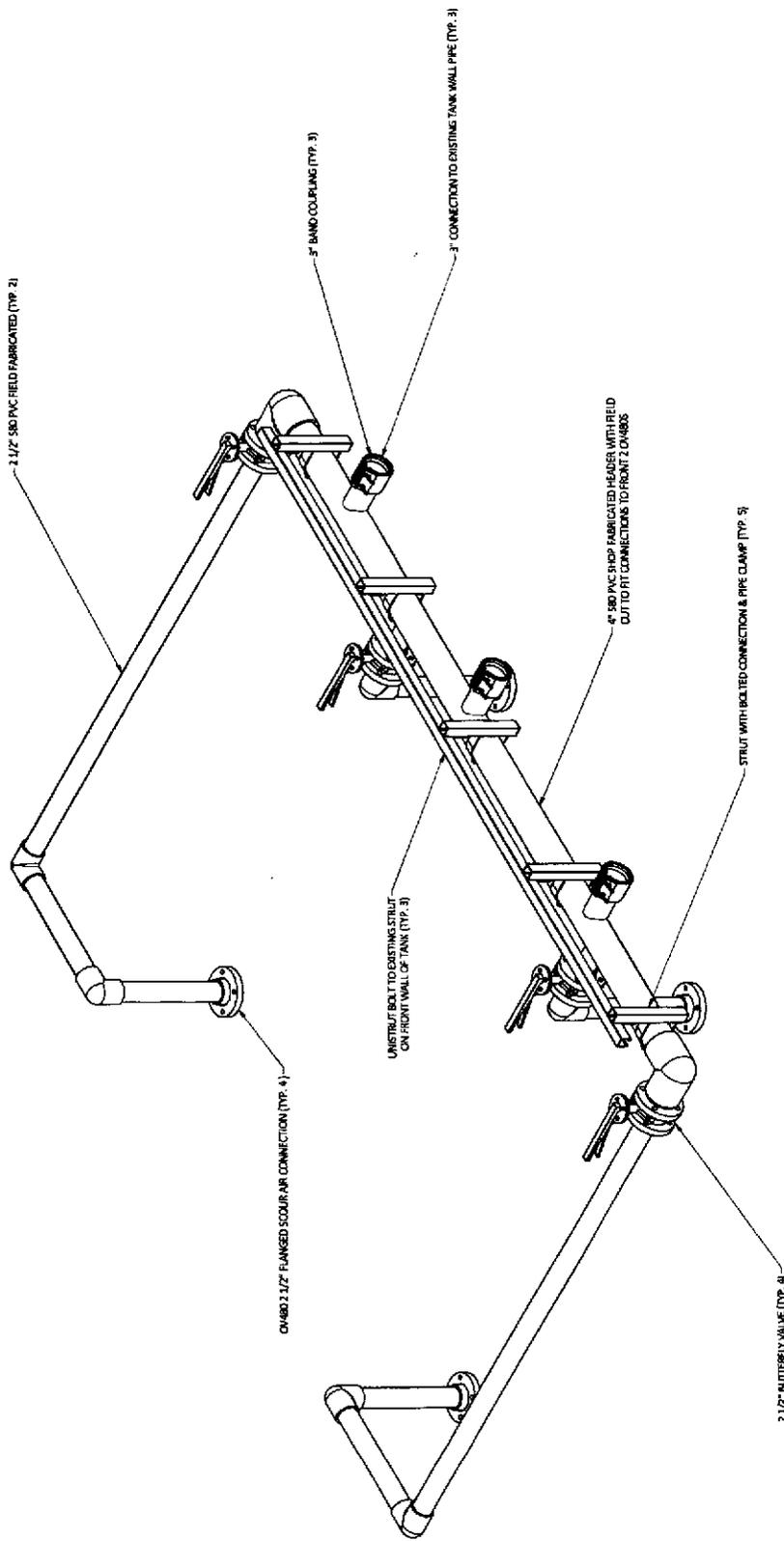
SECTION A-A



SECTION B-B

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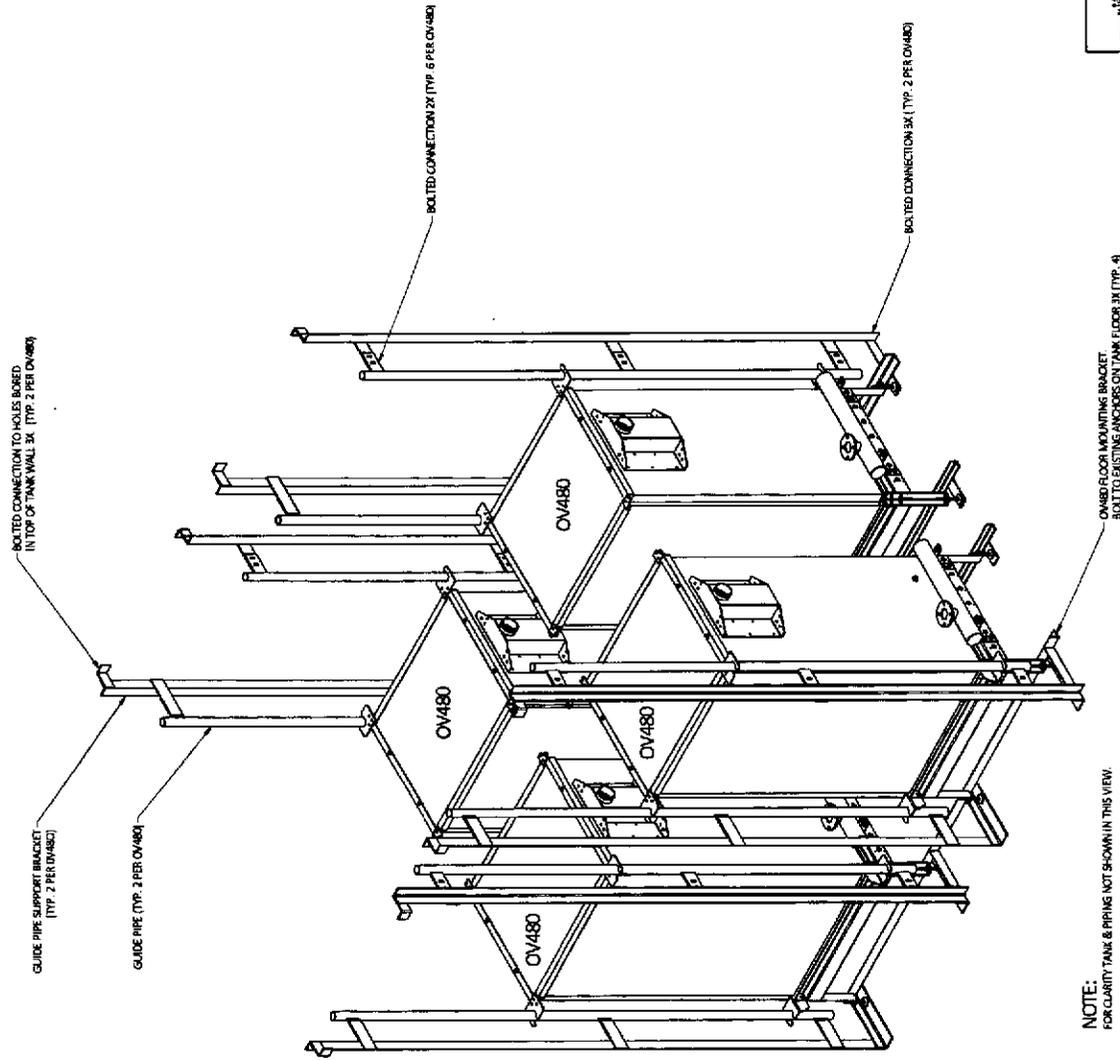
D TITLE BLOCK PROJECT NO. 051916-2-GTT-R0 SHEET NO. 3 OF 6	TYPICAL INDUSTRIES 11000 W. 11TH AVENUE DENVER, CO 80202	HANDED TO: OVIVO HANDED BY: Little Venice MBR WWTW MARATHON FL USA
	DATE: 2/19/2018 DRAWN: JPL/BJR CHECKD:	DO NOT SCALE PRINTS MARATHON FL USA MARATHON WATER TREATMENT PLANT 11000 W. 11TH AVENUE DENVER, CO 80202



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SCOUR AIR PIPING ISO VIEW

D	THE ABOVE INFORMATION IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION. THE USER SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE INFORMATION AND FOR OBTAINING NECESSARY PERMITS AND APPROVALS. THE USER SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS. THE USER SHALL BE RESPONSIBLE FOR OBTAINING NECESSARY PERMITS AND APPROVALS.	WORKSHEET EXPLORE IN WATER TREATMENT
		LITTLE YANKEE MBR WWTPT MARATHON FL USA 04480 UPGRADE MBR BASIN LAYOUT
PROJECT NO. 051916-2-GIT-RO	DATE 05/16/2016	SHEET 5 OF 6
DRAWN BY J. L. BAKER	CHECKED BY D. B. BAKER	ORIGINAL S.C.D.



NOTE:
FOR CLARITY TANK & PIPING NOT SHOWN IN THIS VIEW.

OV480 GUIDE PIPE & SUPPORT ISO VIEW

CONCEPTUAL ONLY
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D ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN MILLIMETERS (INCHES). DIMENSIONS IN PARENTHESES ARE IN INCHES (MILLIMETERS). DIMENSIONS IN PARENTHESES TAKE PRECEDENCE OVER DIMENSIONS IN MILLIMETERS. REF. DIM. DO NOT SCALE PRINTS DATE: 2/18/2016 DRAWN: JPL/MLR CHECKED:		Ovivo Water Systems, Inc. Worldwide Experts in Water Treatment	SHEET # OF 6
	LITTLE VERDE WATER WASTEWATER TREATMENT PLANT PHASE 1B OV480 UPGRADE - PBR BASIN LAYOUT DWG. NO. 651916-2-GT-10	ORIGINAL S.O.	DATE: 2/18/2016 DRAWN: JPL/MLR CHECKED:

Schedule of Support, Marathon FL, WWTP (Preliminary)

Resource	Days																																							
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40
Task/Resource	Stage & Plan																																							
City of Marathon, General Support	Weekend																																							
City, Equipment Staging/Storage	Weekend																																							
City, Basin, Draw Down/Clean	Weekend																																							
City, Crane Services	Weekend																																							
Layne, Demo	Weekend																																							
Layne, Install	Weekend																																							
Ovivo, Project Mgr.	Weekend																																							
Ovivo, Tech Support	Weekend																																							
Ovivo, Controls	Weekend																																							
Receipt of all items for retrofit on-site																																								
Basin 1 Demo/Install	Weekend																																							
Basin 1 Commissioning	Weekend																																							
Basin 2 Demo/Install	Weekend																																							
Basin 2 Comm.	Weekend																																							
Basin 3 Demo	Weekend																																							
Basin 3 Install	Weekend																																							
Basin 3 Comm.	Weekend																																							

OVIVO

Bringing water to life

Terms & 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 prior 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.

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 in 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.

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 shipment. If any of SELLER'S Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER'S job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER, however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER'S negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) any Products that have been altered or repaired in any way without SELLER'S prior written authorization; (iii) The costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER'S estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER'S estimate of what the remaining service life of those parts should have been; provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER'S design, SELLER'S liability shall be limited solely to the assignment of available third-party warranties. **THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.** All warranties and obligations of SELLER shall terminate if PURCHASER fails to perform its obligations under this Agreement including but not limited to any failure to pay any charges due to SELLER. SELLER'S quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.

7. CONFIDENTIAL INFORMATION. All nonpublic information and data furnished to PURCHASER hereunder, including but not limited to price, size, type and design of 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. 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.

9. 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.

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. To the extent allowable by law, subject to the rights, obligations and limitations of liabilities of the parties set forth in this Agreement, PURCHASER shall protect and indemnify SELLER, its ultimate parent, its ultimate parent's subsidiaries and each of their respective officers, directors, employees and agents, from and against all claims, demands and causes of action asserted by any entity to the extent of PURCHASER'S negligence or willful misconduct in connection with 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, 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, 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.

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 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 Miami, FL.

24. ASSIGNMENT. PURCHASER shall not assign or transfer this Agreement without the prior written consent of the 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 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 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, 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.

1. Price and Scope of Supply

Ovivo is pleased to offer the twelve (12) OV480 membrane modules described in our scope of supply to replace all of the existing membrane modules in each of the three existing MBR basins. Equipment supply will include all internal basin supports, piping, brackets, hoses, valves, etc. required within the MBR basins. We will also include required hardware and reprogramming within the existing MBR control panel and the additional required analog inputs from the Vacuum Sewer collection system (up to 5). Ovivo will provide the installation labor for the removal of old membranes and installation of the new OV480 modules. The City of Marathon will provide the required crane and crane operator to pull out and replace the membrane modules. The City of Marathon will be responsible for draining the membrane tank prior to installation as well as disposal of the discarded membrane modules. The City of Marathon will provide any interconnecting wiring between the vacuum sewer control panel and the MBR control panel.

Firm price for membrane equipment and installation is \$690,170.

2. Payment Terms

Prices and estimated shipping dates are based upon the receipt of a purchase order within ninety (90) days from the date of this proposal. Prices quoted are firm for delivery within the time frame cited below. Prices and approval submittals/equipment shipping dates are subject to adjustment if a purchase order is not received within ninety (90) days from the date of this proposal. Pricing is based on the following terms of payment:

<u>Invoice Date</u>	<u>Amount of Invoice</u>
Upon Issuance of Submittal:	10% of Total Price
Upon Delivery of Equipment:	90% of Total Price
Prior to Startup:	95% of Total Price*
One month after Startup of Equipment:	100% of Total Price**

* Not to exceed 60 days after delivery of equipment.
 ** Not to exceed 120 days after delivery of equipment.

All invoices are due and payable within thirty (30) days of the invoice date. Progress payments are required for partial shipments.

3. Price Escalation

The prices submitted are based upon PURCHASER's acceptance of this proposal by July 1st, 2016.

If the above indicated order date is exceeded, prices and shipping dates are subject to review and adjustment. Should shipment dates be exceeded because of customer action, escalation of the selling prices at the rate of 1.5% per month for each month or partial month of delay will be applied. This escalation will be applied only if shipment is delayed by the customer.

In addition, due to fluctuating material costs, the prices quoted in this proposal may be adjusted at the time of delivery. **Only additional unit material costs will be transferred to the PURCHASER.**

4. Taxes

Federal, State or local sales, use or other taxes applicable to this transaction shall be added to the sales price for PURCHASER's account.

5. 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 expense 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.

6. Freight

All prices are quoted with freight allowed to readily accessible location nearest to jobsite.

7. Warranty

Warranty and service policies are limited to equipment supplied by OVIVO Equipment that is not integral to OVIVO equipment will be subject to warranty and service policies of the respective manufacturer.

8. Ordering

All purchase orders tendered on the basis of this proposal shall be issued with statements clearly indicating what line items are being purchased, the cost of each line item to be purchased, and the total sell price of all items being purchased. In addition, any special instructions including shipping address, special or partial shipments, and shipment dates shall be clearly identified. All purchase orders shall be sent to:

Attention: Esther Saler OVIVO
2404 Rutland Drive
Austin, Texas 78758
Phone: (512) 834-6000 Fax: (512) 834-6039

All correspondence dealing with this project and all payments made for equipment based on this offering should be mailed to the same address. In the event that a purchase order is issued to OVIVO, this proposal including the "Terms and Conditions," "General Terms and Conditions of Sale," and "Clarifications" shall be made essential parts of the purchase order. Any order submitted to OVIVO shall be subject to acknowledgement and acceptance by OVIVO

9. Liability and Ownership

Transfer of liability from OVIVO to OWNER occurs upon delivery to shipping address. Transfer of ownership occurs after the full purchase price has been paid. OVIVO retains title and right of repossession to the equipment until the full purchase price has been paid. OWNER or PURCHASER shall not encumber nor permit others to encumber said equipment by any liens or security instruments until the full purchase price has been paid.

10. Past Due Accounts

Payment of invoices shall be in compliance with the "Pricing Terms and Conditions" of this proposal. Amounts past due are subject to a service charge of 2.0 percent per month.

11. Approval of Equipment and Drawing Submittal

Detailed equipment and drawing submittals shall be shipped 6-8 weeks after OVIVO acceptance of purchase order.

OVIVO shall use reasonable efforts to meet the dates specified above for shipment of Approval Submittals, but such dates are estimates provided only to serve as a guide to the OWNER, and not guaranteed. No liability, direct or indirect, is assumed by OVIVO for failure to ship on such dates.

12. Shipment

Shipment will be made the first week of September 2016 and staged for installation over a three week period. Erection drawings and operating and maintenance instructions shall be forwarded at time of shipment of equipment.

OVIVO shall use reasonable efforts to meet the dates specified above for shipment of Equipment, but such dates are estimates provided only to serve as a guide to the OWNER, and not guaranteed. No liability, direct or indirect, is assumed by OVIVO for failure to ship on such dates.

13. Acceptance

Should shipment of equipment be delayed because of unreasonable delays in approval of submittals or at the request of the OWNER beyond nine (9) months after date of purchase order, the selling price shall escalate at the rate of 1.0 percent per month.

OWNER shall pay for acceptance of partial shipments and proper billings of OVIVO even if the OWNER does not pay the PURCHASER, provided the reason for such non-payment by the OWNER is unrelated to the performance of OVIVO. Unauthorized retention of payments by the PURCHASER for any reason shall be subject to a service charge of 2% per month.

Upon receiving equipment, OWNER shall thoroughly inspect and properly store each shipping item in accordance with submittal requirements. Any items marked as shipped on the Bill of Material that are missing or damaged shall be brought to the attention of OVIVO within fourteen (14) days.

The OWNER shall notify the freight company of any crates, boxes, or equipment damaged in transit. OVIVO shall not be responsible for any damaged or missing items not confirmed in writing by the OWNER within fourteen (14) days from the shipping date. Any replacement of equipment and material after this time shall be invoiced.

14. Field Service and Installation

OVIVO shall provide the service of our Field Service Representative to inspect and supervise installation of equipment and to instruct the OWNER's personnel in its operation. A specific number of man-days are shown in our proposal. No reimbursement to the owner shall be allowed for unused man-days or trips.

Adequate notice, generally two (2) weeks, shall be given when scheduling our Field Service Representative. OVIVO's field service and startup of the equipment shall not commence until all subsequent conditions have been met in accordance with the "Pricing Terms & Conditions" of this proposal.