

AGREEMENT

THIS AGREEMENT made and entered into this 12th day of February, 2019, by and between **OVIVO USA, LLC**, hereinafter called the Supplier, and the City of Grand Island, Nebraska, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, in accordance with law, the City has caused contract documents to be prepared and an advertisement calling for bids to be published, for **Furnishing Components for "EIMCO® Type C3D-Full Trough Skimmer Clarifier Mechanism"; Project No. WWTP-2019-1**; and

WHEREAS, the City, in the manner prescribed by law, has publicly opened, examined, and canvassed the proposals submitted, and has determined the aforesaid Supplier to be the lowest responsive bidder, and has duly awarded to the said Supplier a contract therefore, for the sum or sums named in the Supplier's bid, a copy thereof being attached to and made a part of this contract;

NOW, THEREFORE, in consideration of the compensation to be paid to the Supplier and of the mutual agreements herein contained, the parties have agreed and hereby agree, the City for itself and its successors, and the Supplier for itself or themselves, and its or their successors, as follows:

ARTICLE I. That the Supplier shall (a) furnish all tools, equipment, superintendence, transportation, and other construction materials, services and facilities; (b) furnish, as agent for the City, all materials, supplies and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in a good substantial and workmanlike manner and in accordance with the requirements, stipulations, provisions, and conditions of the contract documents as listed in the attached General Specifications and Special Provisions, said documents forming the contract and being as fully a part thereof as if repeated verbatim herein, perform, execute, construct and complete all work included in and covered by the City's official award of this contract to the said Supplier, such award being based on the acceptance by the City of the Supplier's bid;

ARTICLE II. That the City shall pay to the Supplier for the performance of the work embraced in this contract and the Supplier will accept as full compensation therefore the sum (subject to adjustment as provided by the contract) of **ONE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED TWENTY NINE AND 00/100 DOLLARS (\$126,129.00)** for all services, materials, and work covered by and included in the contract award and designated in the foregoing Article I; payments thereof to be made in cash or its equivalent in the manner provided in the General Specifications.

ARTICLE III. The Supplier hereby agrees to act as agent for the City in purchasing materials and supplies for the City for incorporation into the work of this project. The City shall be obligated to the vendor of the materials and supplies for the purchase price, but the Supplier shall handle all payments hereunder on behalf of the City. The vendor shall make demand or claim for payment of the purchase price from the City by submitting an invoice to the Supplier. Title to all materials and supplies purchased hereunder shall vest in the City directly from the vendor. Regardless of the method of payment, title shall vest immediately in the City. The Supplier shall not acquire title to any materials and supplies incorporated into the project. All invoices shall bear the Supplier's name as agent for the City. This paragraph will apply only to these materials and supplies actually incorporated into and becoming a part of the finished product of **Furnish Components for "EIMCO® Type C3D-Full Trough Skimmer Clarifier Mechanism"; Project No. WWTP-2019-1**.

ARTICLE IV. Mechanism disassembly / assembly instructions shall be submitted by **April 1, 2019**. New manufactured components shall be delivered twelve (12) to fourteen (14) weeks after Supplier's receipt of approved drawings from City.

ARTICLE V. It is understood and agreed that time is of the essence. Should the Supplier fail to perform the work within the period of time stipulated, the Supplier shall pay to the City, as liquidated damages and not as a penalty, **\$250.00 per calendar day** of default unless extension of time granted by the City specifically waives the payment of liquidated damages.

ARTICLE VI. The Supplier agrees to comply with all applicable State fair labor standards in the execution of this contract as required by Section 73-102, R.R.S. 1943. The Supplier further agrees to comply with the provisions of Section 48-657, R.R.S. 1943, pertaining to contributions to the Unemployment Compensation Fund of the State of Nebraska. During the performance of this contract, the Supplier and all sub-suppliers agree not to discriminate in hiring or any other employment practice on the basis of race, color, religion, sex, national origin, age or disability. The Supplier agrees to comply with all applicable Local, State and Federal rules and regulations.

ARTICLE VII. GRATUITIES AND KICKBACKS: City Code states that it is unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-supplier under a contract to the prime Supplier or higher tier sub-supplier or any person associated therewith, as an inducement for the award of a subcontract to order.

ARTICLE VIII. The City of Grand Island, Nebraska operates on a fiscal year beginning October 1st and ending on the following September 30th. It is understood and agreed that any portion of this agreement which will be performed in a future fiscal year is contingent upon the City Council adopting budget statements and appropriations sufficient to fund such performance.

ARTICLE IX. FAIR EMPLOYMENT PRACTICES: Each proposer agrees that they will not discriminate against any employee or applicant for employment because of age, race, color, religious creed, ancestry, handicap, sex or political affiliation.

ARTICLE X. LB 403: Every public supplier and his, her or its sub-suppliers who are awarded an agreement by the City for the physical performance of services within the State of Nebraska shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Contract Agreement as of the date and year first above written.

OVIVO USA, LLC

By 

Date 2/6/2019

Title Senior Vice President / GM

CITY OF GRAND ISLAND, NEBRASKA,

By Robert G. Steel
Mayor

Date 2/12/2019

Attest: RaNaee Edwards
City Clerk

The contract and bond are in due form according to law and are hereby approved.

Stacy R. Durbin
Attorney for the City

Date 2/11/19

APPENDIX A – TITLE VI NON-DISCRIMINATION -

During the performance of this contract, the Supplier, for itself, its assignees and successors in interest (hereinafter referred to as the "Supplier") agrees as follows:

- (1) **Compliance with Regulations:** The Supplier shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Supplier, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of sub-suppliers, including procurements of materials and leases of equipment. The Supplier shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Sub-suppliers, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Supplier for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub-supplier or supplier shall be notified by the Supplier of the Supplier's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The Supplier shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Grand Island or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Supplier is in the exclusive possession of another who fails or refuses to furnish this information the Supplier shall so certify to the City of Grand Island, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Supplier's noncompliance with the nondiscrimination provisions of this contract, the City of Grand Island shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the Supplier under the contract until the Supplier complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Supplier shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Supplier shall take such action with respect to any subcontract or procurement as the City of Grand Island or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a Supplier becomes involved in, or is threatened with, litigation with a sub-supplier or supplier as a result of such direction, the Supplier may request the City of Grand Island to enter into such litigation to protect the interests of the City of Grand Island, and, in addition, the Supplier may request the United States to enter into such litigation to protect the interests of the United States.