

DATE: 2/11/2016

Bid/Quote No.

Vendor No. 3135

Vendor Name & Address

evoqua
209 Industrial Blvd.
Cedar Park, TX 78613

James.kopsic@evoqua.com

Ph: 800-224-2450

Fax: 512-259-2336

Freight is FOB
Destination
Deliveries are accepted
between the hours of
8:00 a.m. and 4 p.m.

Invoices are to be sent to requesting dept. for approval. Payment inquiries should be directed to Accounts Payable (accounting.vital@cityofgriffin.com)

*Terms: Net 30 unless otherwise specified on PO

Deliver to:

**City of Griffin
Simmons WTP
229 North Expressway
Griffin, GA 30224**

ATTN: Martha Drolet

Phone: 770-229-6436

Fax:

-- ANY CHANGE ORDERS TO ANY PO OR WORK ORDERS MUST BE AUTHORIZED IN WRITING AND APPROVED. ALL INVOICES SUBMITTED FOR PAYMENT MUST REFERENCE A VALID PURCHASE ORDER NUMBER. --

- VENDORS MUST HAVE A CURRENT REGISTRATION ON FILE PRIOR TO PO PROCESSING -

On File? Y/N

Description	Account Number	Quantity	UOM	Unit Price	Extended Totals
Sodium Chlorite Storage Tank Replacement	505 - 4431 - 52 - 2200 - 0000	1		49,040.000	49,040.00
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
	- - - -				
CAPITAL PROJECT #:	- - - -	enter debit/credit amounts in			
(DISTRIBUTION & \$\$)	- - - -	the extended totals column			

COMMENTS:

Use to be Siemens

Totals: \$

49,040.00

<div> <div>↓</div> <div>COG USE ONLY</div> <div>↓</div> </div>		<div> <div>↓</div> <div>COG USE ONLY</div> <div>↓</div> </div>	
Pricing method:			
<input type="checkbox"/>	Verbal / Phone		
<input type="checkbox"/>	Email/Mail/Fax	Dept / Requestor / Date	Purchasing / Date
<input type="checkbox"/>	Bid / RFP #		
<input type="checkbox"/>	E-Verify Affidavit	Water/Wastewater Martha Drolet2/11/2016	
Vendor emailed copy?		Department Mgr / Date	Finance Director / Date
<input type="checkbox"/>	Vendor Notified		
Invoice apprvd/attchd?			
<input type="checkbox"/>	PMT Approval	City Manager / Date	BOARD / Date
<input type="checkbox"/>	Inv Attached		

TERMS AND CONDITIONS OF PO / CONTRACT

ARTICLE 1 PURCHASE ORDER AUTHORIZATION

Vendors are required to be registered with the City and to have an authorized City Purchase Order (P.O.) before any items/goods/services are delivered. Any shipments made prior to the receipt of a City P.O. are made at the sole risk of the vendor. Payment may be withheld for any and all items/goods/services delivered without an authorized P.O.

ARTICLE 2 PURCHASE ORDER NUMBER

The Purchaser's purchase order number and the successful seller's name (from the bid or proposal) must appear on all packing slips, packages, invoices, bills of lading, warehouse receipts and correspondence with Purchaser. Materials must be properly packaged and marked with the order number. Damaged material will not be accepted.

ARTICLE 3 ACCEPTANCES

All terms and conditions of the purchase order shall become part of the contract between the Seller and Purchaser; the Seller's different or additional terms will not become part of this contract.

ARTICLE 4 PRICE

Seller warrants that the prices quoted hereunder are the lowest prices these or similar articles are sold by the Seller to other customers and in the event of any price reduction between execution of the purchase order and delivery of the goods, purchaser shall be entitled to such reduction.

ARTICLE 5 DELIVERIES, TITLE AND RISK OF LOSS

Title shall pass to Purchaser on delivery of the conforming goods to Purchaser's designated plant or location. Notwithstanding any agreement to pay freight express or other transportation charges, the risk of loss or damage in transit shall be upon the Seller. Delivery shall not be complete until the goods have been actually received, inspected and accepted by the Purchaser.

ARTICLE 6 PARTS

The Seller agrees to make functional parts available for a period of five years after final production run.

ARTICLE 7 WARRANTIES

The Seller warrants that the goods and services supplied hereunder will be of good workmanship and of proper materials, free from defects and in accordance with specifications. If the Seller knows of the Purchaser's intended use, the Seller warrants that the goods or services are suitable for that intended use.

ARTICLE 8 REMEDIES

Regardless of whether goods are being sold or leased or whether services are being performed, the Seller and Purchaser agree that both parties have all the Uniform Commercial Code rights, duties, and remedies available as well as all remedies allowed by law and the purchase order.

ARTICLE 9 CONFLICTS OF LAWS

The agreement of purchase and the performance of the parties hereunder shall be construed with and governed by the laws of the State of Georgia.

ARTICLE 10 MODIFICATIONS

No modifications in prices, delivery methods or schedule, quality, quantity, specifications or any other term of the contract will be effective unless agreed to in writing, signed by Procurement

ARTICLE 11 PATENT INFRINGEMENT

Seller shall hold purchaser harmless from all judgments and expenses arising out of any alleged patent infringement by our use of the merchandise ordered.

ARTICLE 12 TERMINATIONS FOR CAUSE

Purchaser may terminate this contract for cause in the event of a default by Seller. In such event, Purchaser shall not be liable to Seller for any amounts, and Seller shall be liable for and shall hold Purchaser harmless from any damage occasioned by Seller's breach or default.

ARTICLE 13 TERMINATIONS FOR CONVENIENCE

Purchaser may at any time terminate the order in whole or in part for its convenience upon which written notice to Seller in which event Seller shall be entitled to reasonable termination charges which reflects the percentage of the work performed prior to termination.

ARTICLE 14 ENTIRE AGREEMENTS

The purchase order and any documents referred to on the face thereof constitute the entire agreement between the parties and can only be modified in writing and signed by both parties. No part of this order may be assigned or subcontracted without the written approval of the Purchaser. Any moneys due Purchaser from Seller can be set off from any moneys due Seller from Purchaser whether or not under this contract. Purchaser's failure to insist on any right shall not operate as a waiver of any other right. Time is of the essence of this contract.

ARTICLE 15 WORKS ON PREMISES

If the order includes work to be performed on Purchaser's premises, Seller agrees to indemnify the Purchaser from all loss or damage arising out of such work, to observe the highest safety standard, to maintain adequate insurance and to furnish evidence of such insurance at Purchaser's request.

ARTICLE 16 QUALITY GUARANTEE

If any product delivered does not meet applicable specifications, or if the product shall not produce the effect that the supplier represents to the City, the supplier shall pick up the product from the City at no expense to the City. Also, the supplier shall refund to The City of Griffin any money which has been paid for the same. The supplier shall be responsible for attorney fees in the event the supplier defaults and court action is required.

ARTICLE 17 QUALITY TERMS

The City reserves the right to reject any and/or all materials if, in its judgment, the items reflect unsatisfactory workmanship, manufacturing or shipping damage.



CITY OF GRIFFIN

SOLE BRAND*/SOLE SOURCE JUSTIFICATION

Request Type and Details					
<input checked="" type="checkbox"/> Sole Brand* – The item(s) requested have unique performance features (branded) not found in other items but is available on the open market from multiple sources. If not available in GA or a 100 mile radius, it will be treated as a sole source purchase. <input type="checkbox"/> Sole Source – The item(s) requested has necessary features and is available only from a single manufacturer or from a single dealer with exclusive distribution rights. Sole source justifications should be confirmed annually.					
Provide a short description and identify the make and model of the item requested: 5500 gallon HDXPE double wall storage tank with 2" bottom suction fitting equipped with titanium bolts					
Identify the efforts made to locate other sources: Contacted three other companies, none were interested in performing this task and all were outside the 100 mile radius.					
Vendor/Source Name/Address: Evoqua Water Technologies LLC, 2650 Tallevast Road, Sarasota, FL 34243					
Vendor/Source Contact: Vince Alarid		Phone: 352-266-3087			
Scope of Work: Provide description of purpose for the request and what other comparable options have evaluated. (Include brand name, model, and vendor name): The sun has deteriorated the strength of the outer tank on the double wall tank system, we have now. This allows rain to seep in and has weakened the top hatch area so that we are unable to get into the tank to change out the level transducer or inspect the inner tank for leaks.					
Exclusive Capability: Provide a detailed description of proposed source's unique capabilities and/or performance of work and why this is the only source. This is a dangerous chemical to deal with and other companies are just not interested in the removal of the old unit.					
Requestor Information					
<i>I hereby certify the validity of the information and feel confident this justification for sole brand / sole source meets the criteria and would withstand a vendor protest or an audit.</i>					
Date of Request: 2/11/2016		Requestor: Martha Drolet			
Department: Water&Wastewater	Dept Accting Code: 4431	Phone: 770-229-6436			
Purchasing Use Only ↓					
Date Processed:	Date Posted to GPR:	Bid #:			
Outcome:					
Awarded Sole Source	Issued PO/Contract	Competitive Bid	Number of Protests		

* Sole Brands are specific items that may be available on the open market from multiple dealers. Sole BRAND purchases will be treated as sole source if there is only one dealer within the State of Georgia or 100 mile radius of Griffin (whichever is less).

Sole Brand Guidelines

Sole brand items have unique performance features not found in other items but are available on the open market from multiple sources.

Sole Brand purchasing is an exception to the procurement policies. Such requests should not be made unless you are certain there is a valid requirement and adequate documentation to qualify for this exception. The brand name procurement request must clearly demonstrate that the acquisition of the brand name product is:

1. Unique and essential to the department's requirements, thereby precluding consideration of a product manufactured by another company, or
2. Required to match other similar product already in place and the use of an alternate product would cause the department to incur substantial additional costs, and you provide specific information regarding the equipment you are matching.

In order for a request to be considered for Sole Brand, the justification form must be completed and signed. This justification will remain on file for review by auditors.

Factors which do not apply to Sole Brand:

1. Personal preference for the product or vendor.
2. Lack of advance planning.
3. Concerns related to the amount of funds (spending before they expire).
4. Explanation for the actual need and basic use of the item, unless the information relates to the request for unique factors.
5. The statement "No Substitution" will not be considered without completion of the justification.

Sole Source Guidelines

Sole source items have unique performance features not found in other items AND are only available from a single manufacturer or dealer with exclusive distribution rights.

Sole source purchasing is an exception to the procurement policies. Such requests should not be made unless you are certain there is a valid requirement and adequate documentation to qualify for this exception. The sole source procurement request must clearly demonstrate:

1. That there is only one source or only one supplier within the predetermined radius that can provide the goods or services in accordance with the requirements of the department.
2. The existence of limited rights in data patent rights, copyrights or secret processes make the supplies or services available from only one source. Note – the mere existence of such rights do not justify a sole source.
3. Addition of new work that was not within the scope of (or incidental to) the original contract scope of work, either as part of the base contract or as an option, is subject to sole source justification.
4. To match and 'intermember' is an acceptable justification of sole source when you provide specific information regarding the goods/equipment you are matching.

In order for a request to be considered for Sole Source, the justification form must be completed and signed. This justification will remain on file for review by auditors.

Factors which do not apply to Sole Source:

1. Personal preference for the product or vendor.
2. Lack of advance planning.
3. Concerns related to the amount of funds (spending before they expire).
4. Explanation for the actual need and basic use of the item, unless the information relates to the request for unique factors.

February 9, 2016

Martha Drolet
City of Griffin
Harry Simmons Water Treatment Plant
229 N Expressway
P O Box T
Griffin, GA 30224
Email: mdrolet@cityofgriffin.com

**RE: SODIUM CHLORITE STORAGE TANK REPLACEMENT
GRIFFIN, GA
Evoqua Quote No. 2015-107539R1**

Dear Ms. Drolet:

Thank you for your interest in Evoqua Water Technologies. Evoqua would like to submit the following proposal for supply of a sodium chlorite storage tank and all labor associated with installation of new tank and removal/disposal of existing tank.

Evoqua Water Technologies shall install the following:

<u>Quantity</u>	<u>Item</u>
1-	Nominal 5,400 gallon (11'11" diameter, 9'9" tall) HDXPE double wall storage tank with 2" bottom suction fitting equipped with titanium bolts.

The scope of service provided is as outlined below:

- 1) Deliver two empty 350 gallon capacity totes suitable for storage of 25% sodium chlorite solution.
- 2) Provide a sump pump to transfer chemical from existing storage tank to totes.
- 3) Cut up existing tank and load into dumpster
- 4) Supervise offloading of new tank using crane supplied by Griffin, GA
- 5) Install new tank
- 6) Hydrotest the tank
- 7) Pump chlorite from totes into new tank
- 8) Re-connect UltraSonic meter and verify accuracy
- 9) Crane services

Evoqua requests that the City of Griffin, GA provide the following:

- Site access for equipment delivery and installation personnel
- Provide disposal site and coordination of old tank
- Manual and instructions for existing UltraSonic meter

Line	Description	Price
1	Tank and install services	\$49,040

Table 1 – Purchase Order Line Items

Price is F.O.B. factory with freight allowed to jobsite. Invoicing will be upon shipment/completion per line item basis as shown above. Terms of payment are NET 30 days from date of invoice. These prices do not include any applicable taxes

Delivery Schedule:

Equipment: 4-6 weeks after receipt of approved submittals

The delivery schedule is based on credit approval and receipt of approved P.O.

Mechanical Installation includes:

- Tank penetrations
- Installation of fill piping on tank
- Installation of U-vent
- Installation of overfill site gauge
- Installation of level indication system (where applicable)
- Installation of leak detection (where applicable)

Contractor shall be responsible for:

- Tank and Equipment off-loading
- All digging, trenching and excavating
- All site preparation, vault preparation (where applicable) and backfill
- Setting and strapping (where applicable) of the tank
- Electrical supply or connections
- Below grade piping
- Any inspections or certifications not specifically listed
- Modifications of existing structures or equipment

The attached Terms and Conditions are considered part of this proposal and shall prevail.

Evoqua warrants the Chemical Feed System complete for a period of twelve (12) months from acceptance or eighteen (18) months from shipment, whichever occurs first. In addition, the chemical storage tanks shall be warranted for a period of five (5) years from warranty start date.

Contractor to provide/perform all facets of system installation including, but not limited to dewatering, concrete work, containment piping, piping and electrical. Contractor shall provide all equipment for site preparation and equipment off-loading. Only those items specifically listed in this proposal are included; all other items are specifically excluded. 120 VAC, 15 Amp Electrical Service Required For System Operation.

Should a purchase order result from this proposal, please return the *entire* proposal, signed where indicated below, and address the order to:

Evoqua Water Technologies LLC
2650 Tallevast Road
Sarasota, FL 34243

This price associated with this quote will remain in effect for a period of ninety (90) days. If we are not in receipt of an order by the end of this firm price period, we reserve the right to modify the prices quoted.

If you have any further questions, please contact me at (352) 266-0387.

Sincerely,

Evoqua Water Technologies LLC

Vince Alarid

Vince Alarid
Sales Representative, Municipal Services

**RE: SODIUM CHLORITE STORAGE TANK REPLACEMENT
GRIFFIN, GA
Evoqua Quote No. 2015-107539R1**

Evoqua will process your order when we receive acceptance of this proposal, by signing below and returning to sheri.whalen@Evoqua.com or via fax to: (941) 359-7985.

Company Name: _____

This ____ day of _____ Month _____ Year

By: _____

Title: _____

P.O.Number _____

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 ExWorks 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 granular 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.

