

**City of Fayetteville Staff Review Form**

**2019-0255**

**Legistar File ID**

**6/4/2019**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Tim Nyander

4/22/2019

WASTEWATER TREATMENT (730)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends purchase of two critical spare part kits from Ovivo USA, LLC for the Ovivo-brand Macerator Pumps at the Noland and West Side WRRF's in the amount of \$24,823.15 plus applicable taxes, and approval of a budget adjustment.

**Budget Impact:**

5400.730.5800-5414.00	Water and Sewer																								
Account Number	Fund																								
02069.1	Plant Pumps and Equipment - WWTP																								
Project Number	Project Title																								
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">879,599.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">874,315.46</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>5,283.54</b></td> </tr> </table>	<b>Budgeted Item?</b>	Yes	Current Budget	\$	879,599.00			Funds Obligated	\$	874,315.46			Current Balance	<b>\$</b>	<b>5,283.54</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 10%; text-align: right;">27,243.41</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td style="text-align: center;">\$</td> <td style="text-align: right;">27,244.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>5,284.13</b></td> </tr> </table>	Item Cost	\$	27,243.41	Budget Adjustment	\$	27,244.00	Remaining Budget	<b>\$</b>	<b>5,284.13</b>
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V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:** Taxes are estimated at \$2,420.26 for a total of \$27,243.41.



**MEETING OF JUNE 4, 2019**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Water & Sewer Committee  
Tim Nyander, Utilities Director

**FROM:** Greg Weeks, Wastewater Treatment

**DATE:** April 23, 2019

**SUBJECT:** **Approval of a Bid Waiver with Ovivo USA, LLC for purchase of two (2) critical spare part kits for the Macerator (Macer) Pumps used for preliminary 'screening' treatment at the Noland and West Side WRRF's Headworks facilities.**

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**RECOMMENDATION:**

Staff recommends purchase of two critical spare part kits from Ovivo USA, LLC for the Ovivo-brand Macerator Pumps at the Noland and West Side WRRF's in the amount of \$24,823.15 plus applicable taxes, and approval of a budget adjustment.

**BACKGROUND:**

All wastewater at the Noland and West Side facilities goes through a preliminary treatment process where most inorganic solids are removed from the process stream. These 'screened' solids are ground into tiny particulate, washed of organic particulate, dewatered and disposed into waste dumpsters. Earlier this year, one new macerator pump (to replaced failed units) was CIP purchased for each facility. The redundant or second set of pumps at each facility are still operational, however, due to the heavy wear these units experience grinding wastewater solids, they are very vulnerable to unexpected part failures. A kit of critical spare parts, one for each facility, will safe-guard redundancy of macerator pump operations and uninterrupted preliminary treatment.

**DISCUSSION:**

Each facility's screening-handling technology system is sold by Ovivo USA, LLC under its own Brackett Green® MacerAcer® trademark under a know-how license agreement. Trademark licensing makes system components, such as the macerator pumps and spare parts, not commercially available through vendors outside of Ovivo USA, LLC. Ovivo USA, LLC has submitted a quote in the amount of 24,823.15 plus applicable taxes for two macerator pump critical spare part kits. Staff recommends purchase of the critical spare kits, one kit for each facility, as each location has different model maci-pumps. Also, because the macerator pumps are part of a trademarked package system staff recommends approving a bid waiver with Ovivo USA, LLC for purchase of the pump parts.

**BUDGET/STAFF IMPACT:**

A budget adjustment from capital project No.14018 Sewer Rehabilitation-Ramsey & Overcrest will be necessary to fund this purchase of spare parts. The budgeted funds being transferred is cost savings left over after completing the sewer rehabilitation project.

**Attachments:**

Ovivo USA, LLC Quote

Budget Adjustment



Ovivo USA, LLC  
 4246 Riverboat Road, Suite 300  
 Salt Lake City, UT 84123  
 Phone: (801)931-3000 Fax: (801)931-3080

# Customer Quote

**ATTENTION:**

**PHONE NO: 479-575-8284**

<p>SOLD TO</p> <p>CUSTOMER NUMBER 102794</p> <p><b>Fayetteville, City of</b>  <b>113 West Mountain</b>  <b>Fayetteville AR 72701</b>  <b>USA</b></p>	<p>SHIP TO</p> <p><b>Paul R. Noland Wastwater Treatment Plant</b>  <b>1500 N. Foxhunter Road</b>  <b>Fayetteville AR 72701</b>  <b>USA</b></p>
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QUOTE # QSSW102136	DATE 4/9/2019	TERMS Net 30 days	CUSTOMER RFQ NO Maci Pump 300-350	SALESPERSON .ETEC	CURRENCY USD
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L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Ovivo can also provide you with installation labor services.  
 Please contact us for additional turn-key pricing.

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1. Shipment: Approximately 3-4 WEEKS after receipt of purchase order and any required data. Lead times can vary depending on time of order placement and current inventory levels.
  2. Quantities: The prices are based on the quantities shown and are subject to increase if a lesser quantity is required.
  3. FCA: shipping point
  4. Freight: ALLOWED, standard ground shipping only.
  5. Packing: Made ready for standard transport.
  6. Items quoted per customer provided part numbers.
  7. This quote is valid for 30 Days. However, stainless steel parts pricing is valid for 10 days.
  8. \$100.00 Minimum Order
  9. All sales are final.

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1	<b>PART # 556742</b> SHAFT, ROTOR SERIES 300HD Drawing: N/A	1	EA		1,857.98	1,857.98
2	<b>PART # 584926</b> MECHANICAL SEAL, 42MM Drawing: N/A REV _ +	2	EA		998.70	1,997.40
3	<b>PART # 585335</b> CUTTERHEAD, HEADSTOCK Drawing: N/A	1	EA		1,766.00	1,766.00
4	<b>PART # 585336</b> SHEARPLATE (924-050230) Drawing: N/A	1	EA		1,714.72	1,714.72
5	<b>PART # 585733</b> IMPELLER 350MACIPUMP 335DIA (905-050265) Drawing: N/A	1	EA		1,604.72	1,604.72
6	<b>PART # 585734</b> SLEEVE, SEAL Drawing: N/A	1	EA		198.26	198.26
7	<b>PART # 588173</b> BEARING, ROLLER	1	EA		389.26	389.26

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 4246 Riverboat Road, Suite 300  
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Drawing: N/A

8	<b>PART # 588174</b> BEARING,BALL (ANG CONTACT) Drawing: N/A	1	EA		372.42	372.42
9	<b>PART # 696331</b> IMPELLER, MACIPUMP, C&H 266 DIA Drawing: N/A	1	EA		1,852.26	1,852.26
10	<b>PART # 695440</b> BEARING SPACER Drawing: N/A REV _	1	EA		292.08	292.08
11	<b>PART # 697354</b> BEARING,SPACER Drawing: N/A	1	EA		292.08	292.08
12	<b>PART # 697618</b> ORING/SPRING KIT FOR MACIPUMP 51603	2	EA		498.42	996.84

DATE: 4/9/2019



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Please submit purchase order to:

Your point of contact is:

Kyle Dansie

Aftermarket Parts Specialist  
 Inlet Works  
 Email: kyle.dansie@ovivowater.com  
 Phone: 801-931-3308  
 Fax: 801-931-3080

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<b>Sale Amount:</b>	<b>13,334.02</b>
<b>Total Amount:</b>	<b>13,334.02</b>
	USD

DATE: 4/9/2019

- A) The Ovivo USA, LLC Terms and Conditions of Sale are attached and made essential parts of the Ovivo USA, LLC proposal or purchase order confirmation. These terms and conditions replace and supersede any terms and conditions or warranty included in Buyer's or Owner's purchase order, requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Ovivo USA, LLC.
- B) GST and all other taxes are extra, if applicable.
- C) Pricing valid for acceptance 30 days from date of the proposal document, and will be subject to change thereafter.
- D) Shipping shall be (FCA) Free Carrier at point of manufacture unless otherwise stated above. Insurance is the responsibility of Buyer.
- E) Payment terms are stated above.
- F) Duty, freight and brokerage costs are for Buyer's account unless stated otherwise herein.
- G) Minimum billing of \$100 per order.
- H) Notwithstanding any liabilities or responsibilities it has assumed hereunder, Ovivo USA, LLC shall in no event be responsible to Buyer or any third party in contract or in tort, or otherwise, for loss or damage sustained as a result of the operation of the equipment, loss of use, expenses involved in loss of capital claims or Buyer's or Owner's loss of profit or revenues, or any other indirect, incidental, special or consequential loss or damage, whether arising from defects, delay, or any other cause whatsoever.
- I) Current Ovivo USA, LLC paint specifications shall apply unless otherwise specified.
- J) Any and all stock or "off the shelf" parts returned to Ovivo USA, LLC are subject to a re-stocking fee equal to 25% of their respective invoice price. All other parts, including but not limited to customized and special manufactured parts, shall, at the sole discretion of Ovivo USA, LLC be (i) subject to a restocking fee of 45% of their respective invoice price or (ii) non-refundable.

**PLEASE ADDRESS AND SUBMIT YOUR PURCHASE ORDER TO THE ADDRESS INDICATED ABOVE.**



## 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 PURCHASER'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 to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.

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

**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.** 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 salable 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 Utah, 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 Salt Lake City, Utah.

**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.

*Revision Date - September 2010*



Ovivo USA, LLC  
4246 Riverboat Road, Suite 300  
Salt Lake City, UT 84123  
Phone: (801)931-3000 Fax: (801)931-3080

# Customer Quote

**ATTENTION:**

**PHONE NO: 479-575-8284**

<b>SOLD TO</b> CUSTOMER NUMBER 102794 <b>Fayetteville, City of</b> <b>113 West Mountain</b> <b>Fayetteville AR 72701</b> <b>USA</b>	<b>SHIP TO</b> <b>Paul R. Noland Wastwater Treatment Plant</b> <b>1500 N. Foxhunter Road</b> <b>Fayetteville AR 72701</b> <b>USA</b>
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<b>QUOTE #</b> QSSW102133	<b>DATE</b> 4/9/2019	<b>TERMS</b> Net 30 days	<b>CUSTOMER RFQ</b> WS Maci Pump 300 - 300	<b>SALESPERSON</b> .ETEC	<b>CURRENCY</b> USD
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<b>L#</b>	<b>Items</b>	<b>Quantity</b>	<b>U/M</b>	<b>Lead Time</b>	<b>Unit Price</b>	<b>Total Value</b>
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Ovivo can also provide you with installation labor services.  
Please contact us for additional turn-key pricing.

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1. Shipment: Approximately 3-4 WEEKS after receipt of purchase order and any required data. Lead times can vary depending on time of order placement and current inventory levels.
  2. Quantities: The prices are based on the quantities shown and are subject to increase if a lesser quantity is required.
  3. FCA: shipping point
  4. Freight: ALLOWED, standard ground shipping only.
  5. Packing: Made ready for standard transport.
  6. Items quoted per customer provided part numbers.
  7. This quote is valid for 30 Days. However, stainless steel parts pricing is valid for 10 days.
  8. \$100.00 Minimum Order
  9. All sales are final.

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DATE: 4/9/2019

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1	<b>PART # 556742</b> SHAFT, ROTOR SERIES 300HD Drawing: N/A	1	EA		1,857.98	1,857.98
2	<b>PART # 584926</b> MECHANICAL SEAL, 42MM Drawing: N/A REV _ +	2	EA		998.70	1,997.40
3	<b>PART # 585335</b> CUTTERHEAD, HEADSTOCK Drawing: N/A	1	EA		1,609.83	1,609.83
4	<b>PART # 585336</b> SHEARPLATE (924-050230) Drawing: N/A	1	EA		1,714.72	1,714.72
5	<b>PART # 588174</b> BEARING, BALL (ANG CONTACT) Drawing: N/A	1	EA		372.42	372.42
6	<b>PART # 696331</b> IMPELLER, MACIPUMP, C&H 266 DIA Drawing: N/A	1	EA		1,852.26	1,852.26
7	<b>PART # 584927</b> O-RING/SEAL COMPLETE KIT	2	EA		456.42	912.84

DATE: 4/9/2019



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L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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 Please contact us for additional turn-key pricing.

Drawing: N/A REV \_ +

8	<b>PART # 588173</b> BEARING,ROLLER Drawing: N/A	1	EA		389.26	389.26
9	<b>PART # 585734</b> SLEEVE,SEAL Drawing: N/A	1	EA		198.26	198.26
10	<b>PART # 695440</b> BEARING SPACER Drawing: N/A REV _	1	EA		292.08	292.08
11	<b>PART # 697354</b> BEARING,SPACER	1	EA		292.08	292.08



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L#	Items	Quantity	U/M	Lead Time	Unit Price	Total Value
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Ovivo can also provide you with installation labor services.  
 Please contact us for additional turn-key pricing.

Please submit purchase order to:

Your point of contact is:

Kyle Dansie

Aftermarket Parts Specialist  
 Inlet Works  
 Email: kyle.dansie@ovivowater.com  
 Phone: 801-931-3308  
 Fax: 801-931-3080

Drawing: N/A

<b>Sale Amount:</b>	<b>11,489.13</b>
<b>Total Amount:</b>	<b>11,489.13</b>
	USD

DATE: 4/9/2019

- A) The Ovivo USA, LLC Terms and Conditions of Sale are attached and made essential parts of the Ovivo USA, LLC proposal or purchase order confirmation. These terms and conditions replace and supersede any terms and conditions or warranty included in Buyer's or Owner's purchase order, requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Ovivo USA, LLC.
- B) GST and all other taxes are extra, if applicable.
- C) Pricing valid for acceptance 30 days from date of the proposal document, and will be subject to change thereafter.
- D) Shipping shall be (FCA) Free Carrier at point of manufacture unless otherwise stated above. Insurance is the responsibility of Buyer.
- E) Payment terms are stated above.
- F) Duty, freight and brokerage costs are for Buyer's account unless stated otherwise herein.
- G) Minimum billing of \$100 per order.
- H) Notwithstanding any liabilities or responsibilities it has assumed hereunder, Ovivo USA, LLC shall in no event be responsible to Buyer or any third party in contract or in tort, or otherwise, for loss or damage sustained as a result of the operation of the equipment, loss of use, expenses involved in loss of capital claims or Buyer's or Owner's loss of profit or revenues, or any other indirect, incidental, special or consequential loss or damage, whether arising from defects, delay, or any other cause whatsoever.
- I) Current Ovivo USA, LLC paint specifications shall apply unless otherwise specified.
- J) Any and all stock or "off the shelf" parts returned to Ovivo USA, LLC are subject to a re-stocking fee equal to 25% of their respective invoice price. All other parts, including but not limited to customized and special manufactured parts, shall, at the sole discretion of Ovivo USA, LLC be (i) subject to a restocking fee of 45% of their respective invoice price or (ii) non-refundable.

**PLEASE ADDRESS AND SUBMIT YOUR PURCHASE ORDER TO THE ADDRESS INDICATED ABOVE.**

## 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 PURCHASER'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 to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER's interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.

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

**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.** 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.

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*Revision Date - September 2010*