

CITY OF HIGH POINT

AGENDA ITEM



TITLE: Eastside Wastewater Treatment Plant Final Clarifiers 1 & 2 Evoqua Water Technologies	
FROM: Robby Stone – Public Services Director Derrick Boone – Asst. Public Services Director	MEETING DATE: March 18, 2024
PUBLIC HEARING: N/A	ADVERTISED DATE/BY: N/A
ATTACHMENTS: Quote Sole Source Letter Sole Source Recommendation Form	

PURPOSE: To purchase the necessary parts from Evoqua Water Technologies for the rebuild of final clarifiers #1 and #2 at the Eastside Wastewater Treatment Plant (WWTP).

BACKGROUND:

The Eastside WWTP has four final clarifiers that are downstream of the Biological and Nutrient Removal Process (BNR). Final clarifiers #1 and #2 need a replacement drive assembly, Unitube Tow Bro Header, and additional miscellaneous parts. The intent of the Public Services Department is to pre-purchase the parts and hire a contractor to perform the repairs. Final Clarifier # 3 was rebuilt during the previous budget year.

BUDGET IMPACT: Funds for this project are available in the FY 2023-2024 budget.

RECOMMENDATION/ACTION REQUESTED: Public Services is recommending that Evoqua Water Technologies be approved as a sole source vendor to purchase the parts for final clarifiers #1 and #2 at the Eastside WWTP for \$311,965.73.



CITY OF HIGH POINT

AGENDA ITEM



Top view of an existing drive unit.



View of a drained final clarifier



Location of final clarifiers #1 and #2 at the Eastside WWTP.



N19W23993 Ridgeview Pkwy. Suite 200
Waukesha, WI 53188
Phone: 262-521-8368
Fax: 262-521-8249

Sole Source Letter

To: Derrick Boone
Company: City of High Point
Tel: 336-883-3279

Date: 3/6/2024
From: Kris Kebbekus
Tel: (262) 521-8368
Fax: (262) 521-8249

This document is to confirm that Evoqua Water Technologies is the OEM and sole source supplier Evoqua brands, Envirex, DAVCO, US Filter and Siemens wastewater treatment equipment and replacement parts. Heyward Incorporated is Evoqua's authorized sales representative.

If I can be of further assistance or should you have any questions, please feel free to contact me.

Regards,

Kristopher Kebbekus

Evoqua Water Technologies, LLC.



Evoqua Products and Services Proposal

Prepared For:

CITY OF HIGH POINT

211 S HAMILTON ST
High Point, NC 27260-5232

Quote #: 04140112

Transforming Water. Enriching Life.®

Proposal For: CITY OF HIGH POINT
Derrick Boone
211 S HAMILTON ST
High Point, NC 27260-5232
Phone: 3368833237
derrick.boone@highpointnc.gov

Kristopher Kebbekus
Evoqua Water Technologies
N19W23993 Ridgeview Pkwy, Suite 200
Waukesha, WI 53188
Phone: +1 (262) 521-8212
kristopher.kebbekus@xylem.com

Item Pricing Summary

Items

Item	Part No Description	Qty	Net Price	Ext Price
1	W3T268409 W3T592236 / RING-SEAL, 107"OD, 90"ID, .25"TH, 304LSS Additional Comments: Lead Time: 6-8 Weeks	4 EA	\$5,649.24	\$22,596.96
2	W3T268409 W3T592338 / SEAL RING HARDWARE AND WELDING- KIT Additional Comments: Lead Time: 1-2 Weeks	2 EA	\$165.38	\$330.76
3	W3T602277 SEAL, 2 X 3 X .25"THK, NEOPRENE 50-60 D Lead Time: 1-2 Weeks	2 EA	\$6.41	\$12.82
4	W3T570845 Header Assy-TwoBro,Sect A,145'Tank, HDG Lead Time: 10-12 Weeks	4 EA	\$11,147.61	\$44,590.44
5	W3T570846 Header Assy-TwoBro,Sect B,145'Tank, HDG Lead Time: 10-12 Weeks	4 EA	\$8,836.62	\$35,346.48
6	W3T570847 Header Assy-TwoBro,Sect C,145'Tank, HDG Lead Time: 10-12 Weeks	4 EA	\$9,469.60	\$37,878.40
7	W3T570848	4 EA	\$674.97	\$2,699.88

	Blade-Deflector, 96"Manifold, A36 Lead Time: 10-12 Weeks			
8	W2T119874 SQUEEGE-FLDZNG VANE,0.25 X 3",NEOPRENE Lead Time: 1-2 Weeks	300 FT	\$7.20	\$2,160.00
9	W3T277466 Seal-Lower,94"Dia.,27'Long Lead Time: 1-2 Weeks	2 EA	\$284.01	\$568.02
10	W3T18461 SEAL-DRUM,.25 X 3.63 X 312"LG,60-70 DUR Lead Time: 1-2 Weeks	1 EA	\$272.37	\$272.37
11	W3T324552 SHIM, .50 X 2.75 X 15", W/4 SLOTS,304LSS Lead Time: 6-8 Weeks	8 EA	\$70.04	\$560.32
12	W3T324553 SHIM, .25 X 2.75 X 15", W/4 SLOTS,304LSS Lead Time: 6-8 Weeks	8 EA	\$59.13	\$473.04
13	W3T324554 SHIM,10GA X 2.75 X 15",W/4 SLOTS, 304LSS Lead Time: 6-8 Weeks	8 EA	\$51.34	\$410.72
14	W3T324555 SHIM,14GA X 2.75 X 15",W/4 SLOTS,304LSS Lead Time: 6-8 Weeks	16 EA	\$46.86	\$749.76
15	W3T570921 Wiper, 55.00" (HayBaler Neop Belting) Lead Time: 1-2 Weeks	4 EA	\$139.67	\$558.68
16	W3T570922 Wiper, 55.00" (HayBaler Neop Belting)	52 EA	\$139.67	\$7,262.84

	Lead Time: 1-2 Weeks			
17	W3T570923 Wiper, 41.50" (HayBaler Neop Belting) Lead Time: 1-2 Weeks	4 EA	\$116.40	\$465.60
18	W3T570937 Backing Bar,PL 0.25 X 2.00 X 36.00", A36 Lead Time: 6-8 Weeks	4 EA	\$45.72	\$182.88
19	W3T570938 Backing Bar,PL 0.25 X 2.00 X 51.19", A36 Lead Time: 6-8 Weeks	4 EA	\$44.08	\$176.32
20	W3T570939 Backing Bar,PL 0.25 X 2.00 X 52.25", A36 Lead Time: 6-8 Weeks	52 EA	\$52.18	\$2,713.36
21	W3T570940 Counterweight Pl,.25 x 8.50 x 13.75",A36 Lead Time: 6-8 Weeks	172 EA	\$79.32	\$13,643.04
22	W3T570991 Counterweight Pl,.25 x 8.50 x 9.75",A36 Lead Time: 6-8 Weeks	4 EA	\$264.50	\$1,058.00
23	W3T569847 Field Material-Tow Bro Header, SS Lead Time: 1-2 Weeks	2 EA	\$4,021.66	\$8,043.32
24	W3T571063 Drive Assy-H60AHT, CW, 0.03 RPM, EURO Lead Time: 10-12 Weeks	2 EA	\$59,457.65	\$118,915.30
25	W2T119880 KIT,CLAMP W/BAND 50' X.62" FSTNRS & SPLC	2 EA	\$218.29	\$436.58

	Lead Time: 1-2 Weeks			
26	W3T570918	4 EA	\$225.05	\$900.20
	Wiper-Bottom Extn 16.56" (Neoprene 60D)			
	Lead Time: 2-3 Weeks			
27	W3T570919	4 EA	\$232.79	\$931.16
	Wiper-Bottom Extn 111.12"(Neoprene 60D)			
	Lead Time: 2-3 Weeks			
28	W3T570920	12 EA	\$419.04	\$5,028.48
	Wiper-Bottom Extn 212.50"(Neoprene 60D)			
	Lead Time: 2-3 Weeks			

Currency: USD

Quote Totals

Currency: USD

Item(s) Subtotal: \$308,965.73

Freight: \$3,000.00

Total Net Price: \$311,965.73

Our Manufacturer Rep in your area is:



Tim Bishop

704.583.2305 o | 704.591.1335 m | TBishop@heyward.net | heyward.net
2101-A Cambridge Beltway Dr | Charlotte, NC 28273



Evoqua Water Technologies Banking Details

ACH - CTX

Evoqua's preferred payment method is via ACH - CTX:

JP Morgan Chase Bank

Attn: Evoqua Water Technologies, LLC

Account #: 603148011

Swift Code: CHASUS33

ACH Routing / ABA: 044000037

Wire Routing / ABA: 021000021

Remittance details should go to: electronicfunds@evoqua.com

PAPER CHECKS VIA POSTAL SERVICE

Paper checks via Postal Service:

Send to our Lockbox, address is:

Evoqua Water Technologies LLC

28563 Network Place

Chicago, IL 60673-1285

PAPER CHECKS VIA OVERNIGHT / COURIER

Paper checks via Overnight / Courier:

JP Morgan Chase Bank

Attn: Evoqua Water Technologies Lockbox 28563

131 S Dearborn, 6th Floor

Chicago, IL 60603

Remittance details should go to: electronicfunds@evoqua.com

**** If ever instructed to change banking information, contact us immediately at 1-800-466-7873 ****

Payment Terms and Delivery

PO Terms

Purchaser 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 goods and/or services provided under the Contract, including any export license requirements. Purchaser agrees that such goods and/or services 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. PURCHASER 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.

Shipping Information

- Prepaid and Add: Shipping and Handling Charge

Terms

- This quote is valid until 04-03-2024
- Payment terms are with proper credit, and are subject to the attached Evoqua Water Technologies Terms and Conditions

Sales Tax & GST

- The pricing provided in this proposal does not include applicable Sales Tax or GST.
- If your company is exempt from Sales Tax or GST, or eligible for a reduced rate of tax, a tax exemption certificate must be provided no later than with your purchase order.
- If a timely, valid exemption certificate or other documentation is not provided, any applicable Sales Tax or GST will be invoiced and payable.
- New customers may be required to supply a signed credit application to be approved for credit terms.
- **NOTE:** You may be assessed a 3% fee if paying via Credit Card. Find more info on our website here > <https://www.evoqua.com/en/about-us/terms-conditions-sale-products-services/credit-card-fee-faqs/>. Ask us how to avoid paying fees by migrating to ACH CTX payment type.

Purchase Order

- Customer must provide a VALID hard copy Purchase Order reflecting terms for all services/equipment. If a VALID hard copy Purchase Order cannot be provided, a credit card payment must be received in advance of the order.
- VALID hard copy Purchase Order should be sent to kristopher.kebbekus@xylem.com
- If paying by credit card in lieu of Purchase Order, contact your Sales Representative.

You may also mail to:

Evoqua Water Technologies
N19W23993 Ridgeview Pkwy, Suite 200
Waukesha, WI 53188

Payment SHOULD NOT be sent to this above address.

Material Escalation

Due to volatility in steel costs, prices quoted in this proposal will be adjusted to reflect changes in the Metal and Metal Products Index (MMPI) published by the U.S. Department of Labor, Bureau of Labor Statistics. The most recent published MMPI is 312.2 for Jan of 2024. If the MMPI exceeds 318.4 at the time the Equipment is released for manufacture, then the price will be increased by the same percentage as the MMPI exceeds 318.4.

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 N30 - Net 30 days after receipt of invoice. Buyer shall pay interest on all late payments not received by the due date. The Buyer shall be charged the lesser rate of 1 ½% interest per month or the maximum interest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting amounts due but unpaid, including without limitation, collections fees and attorneys' fees. 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 FOB Shipping Point, or for international orders, ExWorks Seller's factory (INCO™ Terms 2020). 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 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 written 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. If Buyer requests a proposal for a change in the Work from Seller and subsequently elects not to proceed with the change, a change order shall be issued to reimburse Seller for reasonable costs incurred for estimating services, design services, and services involved in the preparation of proposed changes.
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, including overhead and profit, 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, (with respect to on-site work) unusual weather conditions, epidemic, pandemic, communicable disease outbreak, quarantines, national emergency, or state or local order.
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, and Seller disclaims any warranty regarding such suitability. 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 Buyer's initial operation of the Work, or in the case of services performed as part of the Work, ninety (90) days from the performance of the 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 (i) operating and maintaining the Work in accordance with Seller's instructions, (ii) not making any unauthorized repairs or alterations, and (iii) 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, improper thermal or electrical capacity, 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 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 (i) promptly notifying Seller of any claim, and (ii) providing reasonable cooperation in the defense of any claim. Buyer shall indemnify, defend, and hold harmless Seller from any claim, cause of action, or liability incurred by Seller as a result of third-party claims for personal injury, death, or damage to tangible property, to the extent caused by Buyer's negligence. Buyer shall have the sole authority to direct the defense of and settle any such indemnified claim. Buyer's indemnification is conditioned on Seller (i) promptly notifying Buyer of any claim, and (ii) 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, in addition to any other available remedy, terminate this agreement for a material breach upon issuance of a written notice of the breach and expiration of a thirty (30) day cure period. In the event of (i) a voluntary or involuntary petition in bankruptcy, (ii) an assignment for the benefit of a creditor, or (iii) a receivership, liquidation, or dissolution, Seller may terminate the agreement immediately, in addition to seeking any other available remedy. 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.** In the event of any claim, dispute, or controversy arising out of or relating in any way to this Agreement (collectively, a "Claim"), Seller and Buyer shall first negotiate in good faith in an effort to resolve the Claim. If, despite good faith efforts, the parties are unable to resolve a Claim through negotiations, the parties shall mediate the Claim in accordance with the commercial mediation procedures of the American Arbitration Association ("AAA"), with such mediation to take place in Pittsburgh, Pennsylvania. If the parties are unable to resolve the Claim through such mediation, then the Claim shall be resolved through final and binding arbitration pursuant to the commercial arbitration procedures of the AAA, with such arbitration to take place in Pittsburgh, Pennsylvania before one arbitrator, who shall have authority to rule on jurisdiction over the Claim. Seller and Buyer agree to the exclusive jurisdiction of the federal and state courts situated in Allegheny County, Pennsylvania for purposes of entering judgment upon the arbitrator's award. The substantially prevailing party, as determined by the arbitrator, shall be entitled to recover all costs, expenses, and charges, including, without limitation, reasonable attorneys' fees and expert witness fees, incurred in connection with the Claim. In case of an Agreement under which Seller ships the Work outside of the United States, or under which Seller's and Buyer's places of business are in different countries, any Claim which is not resolved by the good faith negotiations and mediation required by this Section shall then be determined by arbitration administered by the International Center for Dispute Resolution in accordance with its International Arbitration Rules, with such arbitration taking place in Pittsburgh, Pennsylvania, USA, before one arbitrator, with English as the language of the arbitration. This Agreement and any Claim shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to the choice of law principles thereof.

12. **Export Compliance.** All items, and technologies, software, and work products are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. Any diversion contrary to U.S. law is prohibited. 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. **Anti-Kickback Statute - Discounts.** It is the intent of both Buyer and Seller to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Buyer's price may constitute a 'discount or other reduction in price' under the Anti-Kickback Statute. Seller shall provide Buyer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Buyer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of Products. Buyer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third party reimbursement programs, including Medicare and Medicaid. Buyer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

14. **Federal Program Participation.** Seller represents and warrants that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last five (5) years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last five (5) years in Federal Healthcare Programs. Seller will notify Buyer of any change in the status of the representations and warranties set forth above.

15. **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 AGREEMENT, 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.

16. **Miscellaneous.** These terms, together with any related 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.

Only in the event that the Work contemplated in this Order is related to the provision of medical devices, the following additional terms apply:

17. **Medical Devices Act and Regulatory Disclaimer.** Buyer acknowledges that it is familiar with the U.S. Safe Medical Devices Act of 1990 (the "Devices Act") and the reporting obligations imposed on device users thereunder. In this regard, Buyer agrees to notify Seller within ten (10) days of the occurrence of any event identified in the Devices Act imposing a reporting obligation on Buyer and/or Seller (except for events representing an imminent hazard that require notification to the United States Food and Drug Administration (the "FDA") within seventy-two (72) hours (or such shorter time as required by law), in which case, such notice will be delivered to the FDA and Seller within said period). Buyer will maintain adequate tracking for the Products to enable Seller to meet the FDA requirements applicable to the tracking of medical devices. Although Seller has the required registrations, approvals, and licenses (e.g., U.S. 510(k) pre-market notifications) for all or substantially all of its systems, the purchase of parts and system components from Seller does not provide 510(k) compliance or compliance under any other law, rule or regulation for Buyer's system.

Only in the event that the Work contemplated in this Order is related to the provision of leased or rented equipment (“Leased Equipment”), the following additional terms apply:

18. **Rental Equipment / Services.** Any 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.

Accepted by: _____

Print: _____

Date: _____

SOLE SOURCE JUSTIFICATION FORM

(For Items Costing **\$10,000.00 or More**)

Statutory Reference N.C.G.S. 143-129(e)6

Requisition #

Vendor:

Item(s):

Justification:

Estimated expenditure for the above item(s):

Accounting Unit and Account(s):

CHECK ALL ENTRIES BELOW THAT APPLY TO THE PROPOSED PURCHASE.
ATTACH A MEMO CONTAINING JUSTIFICATION AND SUPPORT
DOCUMENTATION.

1. ☐ Performance or price competition for a product are not available.
2. ☐ A needed product is available from only one source of supply.
3. ☐ Standardization or compatibility is the overriding consideration.
4. ☐ The parts/equipment are required from this source to permit standardization.
5. ☐ None of the above applies. A detailed explanation and justification for this sole source request is contained in attached memo and support documentation.

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the material or service described in this sole source justification be authorized as a sole source for the material or service.

Department Head/Authorized Personnel

Department/Division

Date

APPROVAL PROCESS

Purchasing Manager

Financial Services Director

City Council (\$30,000 – Up)