



CITY OF DELRAY BEACH
100 NW 1st AVENUE, DELRAY BEACH, FL 33444

CHANGE ORDER 2
PURCHASE AGREEMENT FOR
FOR EMERGENCY REPAIRS OF EIMCOBELT
VACUUM FILTER

OVIVO USA, LLC

CITY OF DELRAY BEACH
PURCHASE AGREEMENT CHANGE ORDER

THIS AGREEMENT CHANGE ORDER No. 2 is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as City), whose address is 100 N.W. 1st Avenue, Delray Beach, FL 33444 and Ovivo USA, LLC (hereinafter referred to as Supplier), whose address is 4246 Riverboat Road, Ste. 300, Salt Lake City, UT 84123, this ____ day of _____, 20__.

WITNESSETH:

WHEREAS, on September 15, 2015 City Commission approved a purchase award for Supplier for repairs of two vacuum filters in the amount of \$43,350;

WHEREAS, on April 5, 2017 City Commission approved Change Order 1 to approve additional repair work for the first vacuum filter in the amount of \$41,000;

WHEREAS, additional repair work for the second vacuum filter is required and Supplier submitted a Proposal Q022217C-S dated April 10, 2017 for the extra work in the amount of \$50,420; and

WHEREAS, the City desires to purchase goods and services from Supplier subject to the terms and conditions of Supplier's Proposal, and this Agreement Change Order. Supplier's Proposal hereto is attached and incorporated herein as Exhibit "A".

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties do agree that the Agreement is amended as follows:

1. The above recitals are true and correct and are incorporated herein.
2. The Supplier shall provide to the City emergency repairs for one 8'x12' EIMCOBELT Vacuum Filter in accordance with and pursuant to the terms, conditions and pricing as set forth.
3. This Agreement Change Order is in full force and effect upon full execution by the City for a not-to-exceed amount of Fifty Thousand, Four Hundred Twenty Dollars (\$50,420). The term of the Agreement shall be from _____ through completion of the emergency repairs (approximately eight weeks) unless terminated earlier by the City.
4. Supplier shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Supplier, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim,

cause of action, or demand, Supplier shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement Change Order. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Supplier under this Agreement Change Order may be retained by City until all of City's claims for indemnification pursuant to this Agreement Change Order have been settled or otherwise resolved.

5. This Agreement Change Order shall be construed in accordance with the City of Delray Beach Code of Ordinances and the laws of the State of Florida without respect to any conflict of laws. Any dispute relating to this Agreement Change Order shall only be filled in a court of competent jurisdiction in Palm Beach County, Florida and each of the parties to this Agreement Change Order submits itself to the jurisdiction of such court.
6. The following Public Records provision is hereby added and incorporated into the Agreement.

12. Public Records

IF THE SUPPLIER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUPPLIER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

- a. Supplier shall comply with public records laws, specifically to:
 - i. Keep and maintain public records required by the City to perform the service.
 - ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Supplier does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Supplier or keep and maintain public records required by the City to perform the service. If the Supplier transfers all public records to the City upon completion of the Agreement, the Supplier shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Supplier keeps and maintains public records upon completion of the Agreement, the Supplier shall

meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

v.If the Supplier does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

Supplier is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Supplier and its subcontractors and lower tier subcontractors. Supplier understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Supplier or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

The continuation of this Agreement Change Order beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

7. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City of Delray Beach
ATTN: City Manager
100 N.W. 1st Avenue
Delray Beach, Florida 33444

With Copy To:
City of Delray Beach
ATTN: City Attorney
200 N.W. 1st Ave.
Delray Beach, FL 33444

For Supplier:

Ovivo USA, LLC
4246 Riverboat Road, Ste. 300
Salt Lake City, UT 84123-2583

8. Neither this Agreement Change Order nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.
9. Supplier is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Supplier and its sub licensees and lower tier sub licensees. Supplier understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Supplier or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement Change Order justifying its termination.
10. The documents listed below are a part of this Agreement Change Order and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:
 - A. Terms and conditions as contained in this Agreement Change Order;
 - B. Supplier's Proposal Q022217C-S, and any subsequent information submitted by Supplier prior to execution of this Agreement Change Order.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and Supplier hereto have set their hands and corporate seals on this _____ day of _____, 20__.

ATTEST:

CITY OF DELRAY BEACH

Kimberly Wynn, Interim City Clerk

BY: _____
Cary D. Glickstein, Mayor

Approved as to form for legal sufficiency:

R. Max Lohman, City Attorney

SUPPLIER

By: _____

Printed Name

Title

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____ (name of officer or agent, title of officer or agent), of _____ (name of corporation acknowledging), a _____ (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ (type of identification) as identification

Notary Public – State of Florida