

CITY COUNCIL

For City Clerk's Use:

☐ **APPROVED** ☐ **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 8
Date: December 7, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Christopher W. McKinney, Director of Utilities
Dennis Sperino, Deputy Director of Utilities, Wastewater

SUBJECT: AERATION PANEL REPLACEMENT / UPGRADE

RECOMMENDATION:

The Utilities Department requests that Council adopt Resolution No. 2011-153 authorizing purchase of 360 HIOX® ULTRAFLEX AERATION PANELS, Model 4x12. This will be a sole source purchase of proprietary equipment from Parkson Corporation totaling \$108,750.00.

FISCAL ANALYSIS: N/A

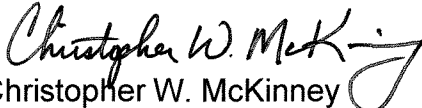
Sufficient funds are available in CIP 800 289 - Wastewater Major Maintenance Project.

PREVIOUS ACTION: None

BACKGROUND:

This requested purchase will allow replacement of all aeration panels currently installed at the Hale Avenue Resource Recovery Facility (HARRF). The panels are no longer covered by warranty. The failure rate of the installed equipment is higher than anticipated for panels installed in 2008. Parkson Corporation investigated these failures, and identified materials and manufacturing methods to produce a more resilient product. Replacing the failing panels and upgrading to panels with a longer useful life will ensure the HARRF continues to meet NPDES Permit Requirements. Installation of this equipment will improve operational reliability of the aeration system for five to seven years. The high rate of failure allowed staff to negotiate with Parkson for no cost installation, operations and maintenance training, and future replacement installations training as required.

Respectfully submitted,


Christopher W. McKinney
Director of Utilities



1401 West Cypress Creek Road
Fort Lauderdale FL 33309-1969

Phone 954.974.6610
Fax 954.974.6182

November 8, 2011

Jim Lazalere
City of Escondido, CA
Hale Avenue Resource Recovery Facility (HARRF)
1521 South Hale Avenue
Escondido, CA 92029

Reference: HiOx® Panels

Dear Mr. Lazalere:

Parkson Corporation is the manufacturer of the existing aeration panels (HiOx) currently installed at the Hale Avenue Resource Recovery Facility. The proposed replacement panels will be able to utilize the existing piping system and hoses.

Parkson Corporation is the sole source manufacturer and distributor of the above mentioned aeration panels. The Coombs-Hopkins Company is Parkson's exclusive sales agent in California.

If you have any questions please do not hesitate to call.

Sincerely,

PARKSON CORPORATION

Vipin Lillaney
HiOx® Product Manager

Cc: Steve Young, Matt Rebmann (Coombs-Hopkins Company)



Fort Lauderdale ♦ Chicago ♦ Montreal ♦ Dubai

www.parkson.com
technology@parkson.com

Quotation

NUMBER: 600244 –Rev 2

DATE: October 26, 2011

June 28th, 2011

TO: Jim Larzalere
Operation Supervisor
City of Escondido, CA

REF.: Aeration Panel Replacement at the
Hale Avenue RRF
City of Escondido, CA
Specification Section: 11010
Aeration System

Parkson Corporation is pleased to provide this quotation for the following:

ITEM 1 SERVICES, as GOODWILL (i.e. No charge)

1.A Panel Replacement Service:

Parkson Corporation will provide one factory representative for supervision and assistance along with a crew of 3-4 people assisting in removal and installation of the replacement panels. Parkson Corporation will provide a crane and have the old panels removed from the site. Parkson will install all the new panels.

1.B Training on installation, replacement, maintenance, flexing and start-up of panels:

Parkson field service representative will train the Escondido operator on installation, replacement and startup/shutdown procedures of HiOx panels.

In addition Parkson will conduct operator training to include HiOx panel maintenance and flexing procedures for optimum performance.

1.C Disposal of panels:

Parkson will dispose all the old panels removed from the basins for replacement.

1.D Mechanical Warranty:

See Section XVI on the attached Standard Conditions of Sale.

Please note that our warranty is based upon compliance with all Parkson instructions regarding unloading, storage, installation and maintenance.

ITEM 2 A TOTAL OF 360 HIOX® ULTRAFLEX AERATION PANELS, MODEL 4 X 12 FT (Parkson reference #600244) Pricing included below

2.A Equipment Description/Materials of Construction:

1. The HiOx UltraFlex Aeration Panel is an ultra-fine bubble aeration system.
2. Each HiOx Aeration Panel will have a punched polyurethane membrane RF welded to a nylon-reinforced two-ply polyurethane base. Additional fasteners, supports and anchors will be 304 stainless steel, if needed. Each HiOx Aeration Panel has a schedule 40 PVC header which is attached to the two feed nozzles of the Aeration Panel and consists of two (2) pipe sections inserted in the two feed nozzles, two (2) 90 degree elbows, two (2) straight pipe sections connected to these two elbows and one (1) tee. This header will be completely assembled. The tee would be adjusted to obtain the proper feed orientation, after the tee there will be one (1) straight pipe section, which will be inserted on site into the flexible hose using silicon and two clamps to prevent any leaking. The tee and last straight pipe section shall be glued at the site.
3. All the existing anchor rods, ball valves, adapters, hoses, PE pipe and pipe supports will be re-used.
4. Anchor bolt caps will be provided for safety reasons.
5. A supply of spare nuts, washers, clips and clamps will be provided.
6. 5% spare panels will be provided.

PURCHASE PRICE:

All of the above for \$100,000.00 USD
F.O.B. Point of Manufacture, freight included, taxes excluded.

VALIDITY:

Purchase Price is valid for thirty (30) calendar days from Quotation date, for shipment of Equipment within the timetable stated below.

PAYMENT TERMS:

90% net 30, 10% upon startup, not to exceed 180 days after shipment

TIMETABLE GUIDELINE:

Shipment Phase: The HiOx panels will be shipped for 1 basin (72 panels) at a time with the first shipment 12 weeks after receipt of Purchase Order.

HiOx Panel Replacement Phase: The HiOx panels will be installed 1 basin at a time with 1- 2 months of gap in between installations. Basin 3 will be installed with replacement panels before Feb 10th, 2012.

Dates are subject to confirmation upon receipt of written Purchase Order.

TERMS AND CONDITIONS:

1. Parkson's Standard Conditions of Sale, as stated on the attached, shall apply.



2. The City of Escondido will be named as "also ensured" on Parkson insurance policies.

PATENTS:

The Equipment and/or process quoted herein may operate under one or more U.S. patents. The Purchase Price includes a one-time royalty payment (if any), which provides the Buyer with immunity to operate the Equipment specified in the Quotation under any applicable patents.

BUYER/OWNER RESPONSIBILITY:

- All above basin air header piping, valves, and supports, except as noted above.
- Unloading and uncrating. Installation will, at minimum, require a forklift and possibly a crane/hoist (crane by Parkson).
- Readiness of the Equipment and basins before requesting replacement service. Non-readiness may incur additional charges.
- Draining of the basins.
- Cleaning of the basin floor after draining.
- Filling the basins with clean or sludge water.
- Operation of valves and gates.
- Compatibility of Equipment materials of construction with process environment.
- Electrical connection and interconnecting wiring.
- Interconnecting piping.
- Piping connections, platforms, gratings and railings unless stated otherwise.
- Any other auxiliary equipment or service not detailed above.

Please return one signed copy of this Quotation, or your Purchase Order, to Parkson Corporation at the address below. Refer to this Quotation, date, and related correspondence.

Issued By:

PARKSON CORPORATION
1401 West Cypress Creek Road
Fort Lauderdale, FL 33309-1969

Accepted By: (Herein called the Buyer)

Name: Vipin Lillaney
Title: HiOx Product Manager
Date: June 28th, 2011

Name
Title:
Date:

Enclosures: Standard Conditions of Sale
Matt Rebmann
The Coombs-Hopkins Company
5411 Avenida Encinas, Suite 250
Carlsbad, CA 92008
760/931-0555 ext. 107 (office)
760/579-9411 (cell)



QUOTATION NO. 600224**Error! Reference source not found.**, Page 4

cc: Steve Young, Regional Manager, Parkson

HiOx Ultraflex Aeration Panel 4/13/10 Supersedes 3/19/09



Standard Conditions of Sale

I. GENERAL: All references to Parkson (or any derivative thereof) shall mean Parkson Corporation and all references to Buyer shall mean the customer named in a purchase order, quotation or proposal (collectively referred to herein as "quotation"). All quotations from Parkson shall be considered solicitations of offers and all purchase orders placed by Buyer shall be considered offers, which can only be accepted in writing by Parkson. Buyer shall either sign Parkson's quotation, or in the alternative, issue a non-conflicting purchase order containing necessary information, such as site name, price schedule, type and quantity of product, requested delivery date and delivery instructions. Parkson hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's request for quotation, purchase order, purchasing or shipping release forms. Notwithstanding any terms or conditions that may be included in Buyer's purchase order form or other communications, Parkson's acceptance is conditional upon Buyer's assent to the terms and conditions set forth herein. It is agreed that sales are made only on the terms and conditions herein and any other terms or conditions shall not become a part of the agreement unless expressly agreed to in writing by Parkson. Parkson's failure to object to any terms or conditions contained in Buyer's purchase order or other communication shall not be deemed to be acceptance of such terms or conditions. These terms and conditions shall be deemed incorporated (as though set forth in full) into any agreement entered into between Parkson and Buyer unless otherwise noted in writing. Parkson reserves the right, without any increase in price, to modify the design and specifications of Parkson products, provided that the modification does not adversely affect the original performance specifications as specified by Parkson or as requested by Buyer. Shipments, deliveries and performance of work shall at all times be subject to the approval of Parkson's Credit Department. Parkson may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Parkson.

II. PRICES, TERMS OF PAYMENT & TAXES: (a) **PRICES:** Unless expressly stated to be firm for a definite period, Parkson's offers are subject to change without notice, and in all cases are subject to withdrawal at any time before acknowledgment by Buyer. Quoted prices are firm for only thirty (30) days. Orders placed after thirty (30) days are subject to price increases in Parkson's sole discretion. Prices on acknowledged orders are firm for the agreed upon delivery time. Customer requests to extend originally agreed upon delivery date(s) will be subject to price escalation. If a price is stated in the quotation, it is based upon shipment of the quantities and quality requested by Buyer and on the basis of Parkson's internal delivery schedule at the time of preparation of said quotation. (b) **TERMS OF PAYMENT:** Payments against invoices shall be due and payable thirty (30) days from the date of delivery to a carrier, or upon receipt of an invoice from Parkson, whichever first occurs. If in Parkson's opinion, Buyer's financial condition does not justify continuation of production or shipment on the terms of payment specified, Parkson may, upon written notice to Buyer, cancel or suspend any outstanding order or part thereof, unless Buyer shall promptly pay for all goods delivered or shall make advance payments to Parkson as it, at its option, shall determine. If Buyer delays shipment for any reason, date of readiness for shipment shall be deemed to be the date of shipment for payment purposes. If Buyer delays manufacture for any reason, a payment shall be made based on purchase price and percentage of completion, with the balance payable in accordance with the terms as stated. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Parkson's right to immediate payment, be increased by 1½% per month on the unpaid balance, not to exceed the maximum amount permitted by law. If at any time in Parkson's judgment Buyer may be or may become unable or unwilling to meet the terms specified herein, Parkson may require satisfactory assurance or full or partial payment as a condition to commencing, or continuing manufacture, or in advance of shipment. (c) **TAXES:** Except for the amount, if any, of tax stated in a Parkson quotation, the prices set forth therein are exclusive of any amount for federal, state, local, excise, sales, use, property, in-country, import, VAT or similar taxes or duties. Such prices also exclude permit, license, customs and similar fees levied upon shipment of Parkson products.

III. SHIPMENT/STORAGE: (a) **SHIPMENT:** The anticipated shipment date(s) set forth in the quotation is/are approximate and subject to change. Notwithstanding other limitations set forth by Parkson, Parkson shall not be liable for any delays in shipment which are caused by events beyond the control of Parkson including, but not limited to, delays caused by inaccurate or incomplete data, changes or revisions in the work to be performed, tardy approval of drawings by Buyer, acts of Buyer or Buyer's agent, Force Majeure, accidents, strikes, inability to obtain labor or materials, or delay in transportation. Parkson shall have the right to extend the anticipated shipment date for up to ten (10) business days, for any reason, provided Parkson shall give Buyer written notice of such delay prior to the scheduled shipping date. Buyer's order will be crated for domestic truck shipment and Parkson assumes no responsibility for loss of, or damage to, the equipment following delivery to a carrier, who shall be deemed to be acting as agent for Buyer, and the equipment shall thereafter be at the Buyer's sole risk. It is Parkson's policy to ship its equipment "Bill Collect," and the carrier will mail its invoice(s) directly to Buyer's billing address, unless otherwise agreed to in writing. (b) **STORAGE:** Once Buyer has been notified that its order is ready for shipment, if Buyer requests that the order (in whole or in part) not be shipped until a later date, the equipment will be segregated from other inventory and Buyer shall execute Parkson's Transfer of Title form evidencing transfer of title and transfer of risk of loss from Parkson to Buyer pursuant to Section IV below. In the event that Buyer shall refuse to execute Parkson's Transfer of Title form and/or if the fabricator is unable to withstand storage of the equipment, Parkson shall have the right, at its sole discretion, to transfer the equipment to an intermediate storage facility, all at Buyer's cost, whereby transfer of title and risk of loss will be deemed to pass, pursuant to Section IV below, when the products are delivered to the carrier at the factory. All costs associated with shipping the equipment to said storage facility or from said storage facility to the job site (or any other site requested by Buyer) shall be the responsibility of Buyer. Buyer shall reimburse Parkson upon demand for any costs incurred by Parkson in connection with said storage, including without limitation, steps taken to protect the equipment from the elements, transport, storage facility fees, insurance, etc. Any delay in shipment requested or caused by Buyer or its agents will not affect the Terms of Payment above.

IV. TITLE & RISK OF LOSS: Parkson's prices are F.O.B. Parkson's Factory and are exclusive of taxes, shipping, handling and insurance. Title to all equipment and risk of loss, deterioration or damage shall pass to Buyer upon delivery to a carrier; except that a security interest in the equipment or any replacement shall remain in Parkson's name, regardless of mode of attachment to realty or other property, until the full purchase price has been received by Parkson. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Parkson's interest by adequately insuring the products against loss or damage from any external cause, including during any storage or transport, with Parkson named as insured or co-insured.



Any claim by Buyer against Parkson for shortage or damage occurring prior to delivery must be made in writing within ten (10) calendar days after receipt of shipment and accompanied by an original transportation bill signed by the carrier noting that carrier received goods from Parkson in the condition claimed. Parkson shall have the right to ship all goods at one time or in portions, within the time for shipping provided in such order, unless specifically requested in writing by the Buyer that these shipments be made in total. Any shipments returned to Parkson as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by Parkson, including any storage costs as set forth in Section III above.

V. ERECTION: Unless otherwise agreed in writing, products are assembled, installed and/or erected by and at the full expense of Buyer.

VI. CANCELLATION & BREACH: Buyer agrees that Parkson products are specially manufactured goods that are not suitable for sale to others in the ordinary course of business. Therefore, purchase orders placed with Parkson cannot be canceled without recourse, nor shipments of goods made up, or in process, be deferred beyond the original shipment dates specified, except with Parkson's written consent and upon terms which shall indemnify Parkson against all loss. In the event of cancellation or the substantial breach of the agreement between Buyer and Parkson, including without limitation, failing to make payment when due, Buyer agrees that Parkson will suffer serious and substantial damage which will be difficult, if not impossible, to measure, both at the time of entering the agreement and as of the time of such cancellation or breach. Therefore, the parties agree that upon such cancellation or breach, the Buyer shall pay to Parkson the sums set forth below which Parkson and Buyer do hereby agree shall constitute agreed and liquidated damages in such event:

- a. If cancellation or breach shall occur after the acceptance of the purchase order but prior to mailing of general arrangement drawings by Parkson to Buyer, liquidated damages shall be 10% of the selling price.
- b. If cancellation or breach shall occur within thirty (30) days from the mailing of general arrangement drawings by Parkson to Buyer, the liquidated damages shall be 30% of the selling price.
- c. If the cancellation or breach occurs after thirty (30) days from the mailing of general arrangement drawings by Parkson to Buyer, but prior to notification that the order is ready for shipment, the liquidated damages shall be the total of 30% of the selling price plus the expenses incurred, cost of material, and reasonable value of the work expended to fill the respective order by Parkson's engineers and other employees, agents and representatives after the mailing of general arrangement drawings by Parkson to Buyer. All sums will be determined at the sole reasonable discretion of Parkson provided, however, that the total liquidated damages under this provision shall not exceed the total selling price.
- d. If cancellation or breach shall occur after Parkson has notified Buyer that the order is ready for shipment, then the liquidated damages shall be the total selling price.

VII. DRAWINGS & SPECIFICATIONS: In the event that drawings are sent to Buyer for approval after an order is placed, the drawings must be returned marked "Approved" or "Approved As Noted" within twenty (20) calendar days after receipt unless otherwise noted. In the event that Buyer's written comments are not given within the twenty (20) day period, Parkson shall deem the items approved.

VIII. CORRECTIVE WORK & "BACK CHARGES": In no event shall any work be done, or services or material be purchased or expense otherwise incurred by the Buyer for the account of Parkson until after full and complete particulars (including an estimate of material cost) have been submitted in writing and approved in writing by Parkson. Parkson must be given the opportunity to discuss and research alternative methods to lower the costs involved in such corrective work. Unless agreed-upon in writing by Parkson, Parkson will not be liable for labor costs, overhead, administrative costs, interest or any other consequential or indirect costs Buyer incurs. Returned items will not be accepted unless Parkson has previously agreed to such return in writing and supplied written return-shipping instructions to Buyer.

IX. SELECTION OF MATERIALS: Because all Parkson products are specially manufactured products, the material make-up of many of Parkson's products varies from project to project. The determination of the materials' suitability and adaptability (including without limitation, paints and/or coatings) to the specific needs of the Buyer is solely the Buyer's choice and responsibility.

X. CONFIDENTIAL INFORMATION & IMPROVEMENTS: The design, construction, application and operation of Parkson's products, services and relevant documentation embody proprietary and confidential information; therefore, Buyer will maintain this information in strict confidence, will not disclose it to others, and will only use this information in connection with the use of the products or to facilitate the provision of services sold by Parkson. Buyer will not copy or reproduce any written or printed materials or drawings furnished to Buyer by Parkson. Buyer agrees to immediately return all confidential material to Parkson if requested in writing by Parkson. Buyer will not copy any information provided by Parkson or make any design drawings of Parkson's equipment and will not permit others to copy or make any design drawings of the equipment. Parkson shall have a royalty-free license to make, use and sell, any changes or improvements in the products invented or suggested by Buyer or its employees. Buyer acknowledges that a remedy at law for any breach or attempted breach of this Section will result in a harm to Parkson for which monetary damages alone will not be adequate. Buyer covenants and agrees that neither it nor any of its affiliates will oppose any demand for specific performance and injunctive and other equitable relief in case of any such breach or attempted breach. Notwithstanding anything to the contrary herein, Parkson may seek enforcement of any breach of this Section without the necessity of complying with the provisions regarding resolution of disputes herein.

XI. FIELD SERVICE: Field Service included in the quotation will only be scheduled upon written request and may be subject to credit approval. Should the Buyer have outstanding balances due Parkson, no startup / field service will be scheduled until such payments are received by Parkson. The Buyer assumes all responsibility for the readiness of the system when it requests startup service. Should Parkson's Field Service Engineer arrive at the jobsite and determine that the system cannot be started up within a reasonable time, Parkson shall have the option to bring the Field Service Engineer home and bill the Buyer for time, travel and living expenses. Additional field service is available from Parkson at the prevailing per-diem rate at the time of the



request for service plus all travel and living expenses, portal-to-portal. A purchase order or change order will be required prior to scheduling this additional service.

XII. LIMITATION OF LIABILITY: Unless expressly agreed to in writing by Parkson, all damages not direct and actual in nature, including without limitation, consequential, incidental, indirect, exemplary and punitive damages, shall be expressly prohibited damages. Such prohibited damages include, but are not limited to, lost rent or revenue; rental payments; costs (increased or not) of administration or supervision; costs or delays suffered by others unable to commence work or provide services as previously scheduled for which a party to this contract may be liable; increased costs of borrowing funds devoted to the project (including interest); delays in selling all or part of the project upon completion; damages caused by reason of Force Majeure or acts of God (with the broadest statutory or court of law definition possible); termination of agreements to lease or buy all or part of the project, whether or not suffered before completion of services or work; forfeited bonds, deposits, or other monetary costs or penalties due to delay of the project; interest for any reason assessed to Buyer; increased taxes (federal, state, local, or international) due to delay or recharacterization of the project; lost tax credits or deductions due to delay; impairment of security; attorney and other legal fees for any reason assessed to Buyer, loss of use of the Equipment or any associated Equipment, costs of substitute Equipment, facilities or services, down time costs, claims of customers of Buyer for such other damages; or any other indirect loss arising from the conduct of the parties. Parkson only agrees to responsibility for damages from proven negligent and willful acts of its direct employees only.

XIII. APPLICABLE LAWS & GOVERNING LAW: To the best of Parkson's knowledge, Parkson products comply with most laws, regulations and industrial practices; however, Parkson does not accept responsibility for any state, city or other local law not specifically brought to Parkson's attention. For OSHA compliance, (1) Parkson is only liable for those OSHA standards that are in effect as of the date of the quotation, and to the extent they are applicable to the performance of Parkson. (2) Parkson is only responsible for the physical characteristics of the product(s) and not for the circumstances of the use of the product(s). (3) Parkson's liability through any noncompliance to OSHA shall be limited to the cost of modifying the product(s) or replacing the non-complying product(s) or component(s) after receipt of prompt written notice of noncompliance. The rights and obligations of Buyer and Parkson shall be governed by and interpreted in accordance with the substantive laws of the state of Florida including the uniform commercial code of Florida, excluding conflicts of law and choice of law principles.

XIV. DISPUTE RESOLUTION: Any issue, difference, claim or dispute ("Action") that may arise out of or in connection with the project referenced in the quotation, including these terms and conditions, shall be first resolved by negotiation at the highest executive levels between the Buyer and Parkson. If said negotiation is unsuccessful, any said Action or any transactions contemplated hereby or in the Quotation shall be finally settled under BINDING ARBITRATION in Broward County, Florida. Any such arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association and shall be overseen by one (1) single arbitrator. Buyer and Parkson shall agree upon a single arbitrator or, if Buyer and Parkson cannot agree upon an arbitrator within thirty (30) days, then the Buyer and Parkson agree that the American Arbitration Association shall appoint a single arbitrator. In the event that an Action is brought, the prevailing party shall be entitled to be reimbursed for, and/or have judgment entered with respect to, all of its costs and expenses, including reasonable attorney's fees' and legal expenses. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

XV. PATENTS: Parkson shall indemnify Buyer against any judgment for damages and costs which may be rendered against Buyer in a suit brought on account of the alleged infringement of any United States patent by any product supplied by Parkson, unless (a) the alleged infringement occurs as a result of any alteration or modification to the product or the use of the product in combination with the products or services of any party other than Parkson, or (b) the product was made in accordance with materials, designs or specifications furnished or designated by Buyer, in which case Buyer shall indemnify Parkson against any judgment for damages and costs which may be rendered against Parkson in any suit brought on account of the alleged infringement of any United States patent by such product or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and an opportunity be given to such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. Parkson shall in no event be liable to Buyer for special, indirect, incidental or consequential damages arising out of allegation of patent infringement.

XVI. MECHANICAL WARRANTY: For a period of one (1) year following the Equipment shipment date ("Warranty Period"), Parkson's Equipment is limitedly warranted to be free from defective material and workmanship, under normal use and service and when installed, operated and maintained in accordance with installation instructions, this policy and maintenance/operating procedures. To make claim under this Warranty, Buyer must notify Parkson within ten (10) business days after the date of discovery of any nonconformity and make the affected Equipment immediately available for inspection by Parkson or its service representative. Parkson Equipment may be deemed nonconforming only by an authorized Parkson representative. Returns will not be accepted unless Parkson has authorized said return in writing. If Parkson's inspection indicates nonconforming materials and/or workmanship, the Equipment will, at Parkson's option, either be repaired or replaced without charge. Upon receipt of Parkson's written consent, Equipment may be promptly returned to Parkson, F.O.B. its factory. However, under certain circumstances, Parkson may decide, in its sole discretion, to repair or replace the Equipment at the Project site. Buyer hereby agrees to provide Parkson, its employees and/or representatives, free of charge, on-site access to the Project site, and any necessary utilities and plant personnel needed by Parkson for the purpose of repairing and/or replacing nonconforming Equipment per this Warranty.

The following will void this Warranty:

- (A) Equipment is used for purposes other than those for which it was designed;
- (B) Equipment is not used in accordance with generally approved practices;
- (C) Disasters, whether natural or manmade, such as fire, flood, wind, earthquake, cave-in, lightning, war, or vandalism;



- (D) Unauthorized alterations to or modifications of the Equipment not approved by Parkson, in writing;
- (E) Abuse, neglect or misuse of Equipment, including without limitation, operation of Equipment after a defect is discovered;
- (F) Operation of Equipment by persons not properly trained for that purpose;
- (G) Failure to operate the Equipment in accordance with Parkson's specifications, O&M manuals or other written guidelines; and/or
- (H) Failure to perform regular cleaning, inspection, adjustment and/or preventative maintenance.

BE ADVISED: Parkson is not liable for any corrective work or expenditure that has not been authorized by Parkson in writing prior to the commencement of such work and prior to committing to such expenditures. Inspection service calls, requested by Buyer, where no evidence of nonconforming materials and/or workmanship is found, will be invoiced to the Buyer at Parkson's current per diem, plus all travel and living expenses. Onsite labor and freight are not covered by this Warranty. This Warranty does not cover normal wear and tear. Following a Warranty claim, verification of proper operation and maintenance is required. Physical damage due to external forces and/or accident is not covered by this Warranty. The effects of corrosion and unforeseeable influent characteristics are excluded from this Warranty. Actions by 3rd parties in causing nonconformity of the Equipment are not covered under this Warranty.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES AND WARRANTIES OF ANY KIND WHATSOEVER, WRITTEN, ORAL OR IMPLIED; ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

XVII. INDEMNIFICATION: Buyer shall comply and require its employees to comply with all instructions given by Parkson regarding installation, use and maintenance of the Equipment sold by Parkson and shall require its employees to use reasonable care and all safety devices in the operation and maintenance of said Equipment. Buyer shall not remove or permit removal or modification of any safety device, warning sign or label. Buyer shall immediately give Parkson written notice of any personal injury or property damage arising out of the use of the Equipment and cooperate with Parkson in investigating any such accident or malfunction. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind and nature (including attorney's fees) for personal injury or property damage arising from or in any way connected with the operations, activities or use of the Equipment sold by Parkson if Buyer fails to fulfill any of the foregoing obligations. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) which may be asserted against Parkson and its suppliers by any person relating to any portion of the Equipment which includes Buyer's existing equipment or equipment furnished by Buyer and to defend Parkson and its suppliers at Buyer's expense against any suit which may be commenced relating to the foregoing. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) for loss or damage to persons or property, other than the Equipment sold hereby or Buyer's possession or use of said Equipment.

XVIII. MISCELLANEOUS: Parkson does not assume responsibility for nor warrant the performance or accuracy of Buyer's furnished design, design criteria, or specifications. The parties agree that the foregoing terms and conditions constitute the entire terms and conditions between Buyer and Parkson and that there are no other agreements, terms or conditions, expressed or implied, unless otherwise agreed to in writing by Parkson. The terms and conditions herein shall supersede any terms and conditions of any other document that may apply to the transaction between the Buyer and Parkson. This document may not be modified or superseded other than by an instrument in writing signed by both Buyer and Parkson. This document shall be binding upon and inure to the benefit of Buyer and Parkson and their heirs, assignees, legal representatives and the project Owner for the project referenced in the quotation. The invalidity or non-enforceability of any particular provision of this document shall not affect the other provisions hereof, and this document shall be construed in all respects as if such invalid or unenforceable provisions were omitted.



1401 West Cypress Creek Road
Fort Lauderdale FL 33309-1969

Phone 954.974.6610
Fax 954.974.6182

November 8, 2011

Jim Lazalere
City of Escondido, CA
Hale Avenue Resource Recovery Facility (HARRF)
1521 South Hale Avenue
Escondido, CA 92029

Reference: HiOx® Panels

Dear Mr. Lazalere:

Parkson Corporation is the manufacturer of the existing aeration panels (HiOx) currently installed at the Hale Avenue Resource Recovery Facility. The proposed replacement panels will be able to utilize the existing piping system and hoses.

Parkson Corporation is the sole source manufacturer and distributor of the above mentioned aeration panels. The Coombs-Hopkins Company is Parkson's exclusive sales agent in California.

If you have any questions please do not hesitate to call.

Sincerely,

PARKSON CORPORATION

Vipin Lillaney
HiOx® Product Manager

Cc: Steve Young, Matt Rebmann (Coombs-Hopkins Company)



Fort Lauderdale ♦ Chicago ♦ Montreal ♦ Dubai

www.parkson.com
technology@parkson.com

RESOLUTION NO. 2011-153

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING PURCHASE OF 360 HIOX®
ULTRAFLEX AERATION PANELS FOR THE
HALE AVENUE RESOURCE RECOVERY
FACILITY

WHEREAS, the Hale Avenue Resource Recovery Facility (HARRF) is critical to the City of Escondido's stewardship of the environment and local economy via treatment of wastewater and supply of recycled water; and

WHEREAS, aeration panels are important components in the aeration system at the HARRF that diffuse air into the aeration basins to achieve effective wastewater treatment; and

WHEREAS, the currently installed aeration panels are failing, resulting in increased maintenance cost, increased operations cost, and reduced aeration efficiency; and

WHEREAS, the manufacturer, Parkson Corporation, has identified materials and developed manufacturing methods to produce a more resilient product; and

WHEREAS, the City Council deems it to be in the best public interest to approve purchase of 360 HIOX® ULTRAFLEX AERATION PANELS for the HAARF from Parkson Corporation via Coombs-Hopkins, via a sole-source purchase, in an amount not to exceed \$108,750.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.

2. That the Mayor and the City Council authorize the City Manager or his designee to execute, on behalf of the City, the purchase of 360 HIOX® ULTRAFLEX AERATION PANELS, Model 4x12. A copy of the Proposal is attached to this Resolution as Exhibit "1" and is incorporated by this reference.



Quotation

NUMBER: 600244 –Rev 2

DATE: October 26, 2011

June 28th, 2011

TO: Jim Larzalere
Operation Supervisor
City of Escondido, CA

REF.: Aeration Panel Replacement at the
Hale Avenue RRF
City of Escondido, CA
Specification Section: 11010
Aeration System

Parkson Corporation is pleased to provide this quotation for the following:

ITEM 1 SERVICES, as GOODWILL (i.e. No charge)

1.A Panel Replacement Service:

Parkson Corporation will provide one factory representative for supervision and assistance along with a crew of 3-4 people assisting in removal and installation of the replacement panels. Parkson Corporation will provide a crane and have the old panels removed from the site. Parkson will install all the new panels.

1.B Training on installation, replacement, maintenance, flexing and start-up of panels:

Parkson field service representative will train the Escondido operator on installation, replacement and startup/shutdown procedures of HiOx panels.

In addition Parkson will conduct operator training to include HiOx panel maintenance and flexing procedures for optimum performance.

1.C Disposal of panels:

Parkson will dispose all the old panels removed from the basins for replacement.

1.D Mechanical Warranty:

See Section XVI on the attached Standard Conditions of Sale.

Please note that our warranty is based upon compliance with all Parkson instructions regarding unloading, storage, installation and maintenance.



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ITEM 2 A TOTAL OF 360 HIOX® ULTRAFLEX AERATION PANELS, MODEL 4 X 12 FT (Parkson reference #600244) Pricing included below

2.A Equipment Description/Materials of Construction:

1. The HiOx UltraFlex Aeration Panel is an ultra-fine bubble aeration system.
2. Each HiOx Aeration Panel will have a punched polyurethane membrane RF welded to a nylon-reinforced two-ply polyurethane base. Additional fasteners, supports and anchors will be 304 stainless steel, if needed. Each HiOx Aeration Panel has a schedule 40 PVC header which is attached to the two feed nozzles of the Aeration Panel and consists of two (2) pipe sections inserted in the two feed nozzles, two (2) 90 degree elbows, two (2) straight pipe sections connected to these two elbows and one (1) tee. This header will be completely assembled. The tee would be adjusted to obtain the proper feed orientation, after the tee there will be one (1) straight pipe section, which will be inserted on site into the flexible hose using silicon and two clamps to prevent any leaking. The tee and last straight pipe section shall be glued at the site.
3. All the existing anchor rods, ball valves, adapters, hoses, PE pipe and pipe supports will be re-used.
4. Anchor bolt caps will be provided for safety reasons.
5. A supply of spare nuts, washers, clips and clamps will be provided.
6. 5% spare panels will be provided.

PURCHASE PRICE:

All of the above for \$100,000.00 USD
F.O.B. Point of Manufacture, freight included, taxes excluded.

VALIDITY:

Purchase Price is valid for thirty (30) calendar days from Quotation date, for shipment of Equipment within the timetable stated below.

PAYMENT TERMS:

90% net 30, 10% upon startup, not to exceed 180 days after shipment

TIMETABLE GUIDELINE:

Shipment Phase: The HiOx panels will be shipped for 1 basin (72 panels) at a time with the first shipment 12 weeks after receipt of Purchase Order.

HiOx Panel Replacement Phase: The HiOx panels will be installed 1 basin at a time with 1- 2 months of gap in between installations. Basin 3 will be installed with replacement panels before Feb 10th, 2012.

Dates are subject to confirmation upon receipt of written Purchase Order.

TERMS AND CONDITIONS:

1. Parkson's Standard Conditions of Sale, as stated on the attached, shall apply.



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2. The City of Escondido will be named as "also ensured" on Parkson insurance policies.

PATENTS:

The Equipment and/or process quoted herein may operate under one or more U.S. patents. The Purchase Price includes a one-time royalty payment (if any), which provides the Buyer with immunity to operate the Equipment specified in the Quotation under any applicable patents.

BUYER/OWNER RESPONSIBILITY:

- All above basin air header piping, valves, and supports, except as noted above.
- Unloading and uncrating. Installation will, at minimum, require a forklift and possibly a crane/hoist (crane by Parkson).
- Readiness of the Equipment and basins before requesting replacement service. Non-readiness may incur additional charges.
- Draining of the basins.
- Cleaning of the basin floor after draining.
- Filling the basins with clean or sludge water.
- Operation of valves and gates.
- Compatibility of Equipment materials of construction with process environment.
- Electrical connection and interconnecting wiring.
- Interconnecting piping.
- Piping connections, platforms, gratings and railings unless stated otherwise.
- Any other auxiliary equipment or service not detailed above.

Please return one signed copy of this Quotation, or your Purchase Order, to Parkson Corporation at the address below. Refer to this Quotation, date, and related correspondence.

Issued By:

PARKSON CORPORATION
1401 West Cypress Creek Road
Fort Lauderdale, FL 33309-1969

Accepted By: (Herein called the Buyer)

Name: Vipin Lillaney
Title: HiOx Product Manager
Date: June 28th, 2011

Name
Title:
Date:

Enclosures: Standard Conditions of Sale
Matt Rebmann
The Coombs-Hopkins Company
5411 Avenida Encinas, Suite 250
Carlsbad, CA 92008
760/931-0555 ext. 107 (office)
760/579-9411 (cell)



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cc: Steve Young, Regional Manager, Parkson

HiOx Ultraflex Aeration Panel 4/13/10 Supersedes 3/19/09



Standard Conditions of Sale

I. GENERAL: All references to Parkson (or any derivative thereof) shall mean Parkson Corporation and all references to Buyer shall mean the customer named in a purchase order, quotation or proposal (collectively referred to herein as "quotation"). All quotations from Parkson shall be considered solicitations of offers and all purchase orders placed by Buyer shall be considered offers, which can only be accepted in writing by Parkson. Buyer shall either sign Parkson's quotation, or in the alternative, issue a non-conflicting purchase order containing necessary information, such as site name, price schedule, type and quantity of product, requested delivery date and delivery instructions. Parkson hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's request for quotation, purchase order, purchasing or shipping release forms. Notwithstanding any terms or conditions that may be included in Buyer's purchase order form or other communications, Parkson's acceptance is conditional upon Buyer's assent to the terms and conditions set forth herein. It is agreed that sales are made only on the terms and conditions herein and any other terms or conditions shall not become a part of the agreement unless expressly agreed to in writing by Parkson. Parkson's failure to object to any terms or conditions contained in Buyer's purchase order or other communication shall not be deemed to be acceptance of such terms or conditions. These terms and conditions shall be deemed incorporated (as though set forth in full) into any agreement entered into between Parkson and Buyer unless otherwise noted in writing. Parkson reserves the right, without any increase in price, to modify the design and specifications of Parkson products, provided that the modification does not adversely affect the original performance specifications as specified by Parkson or as requested by Buyer. Shipments, deliveries and performance of work shall at all times be subject to the approval of Parkson's Credit Department. Parkson may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Parkson.

II. PRICES, TERMS OF PAYMENT & TAXES: (a) **PRICES:** Unless expressly stated to be firm for a definite period, Parkson's offers are subject to change without notice, and in all cases are subject to withdrawal at any time before acknowledgment by Buyer. Quoted prices are firm for only thirty (30) days. Orders placed after thirty (30) days are subject to price increases in Parkson's sole discretion. Prices on acknowledged orders are firm for the agreed upon delivery time. Customer requests to extend originally agreed upon delivery date(s) will be subject to price escalation. If a price is stated in the quotation, it is based upon shipment of the quantities and quality requested by Buyer and on the basis of Parkson's internal delivery schedule at the time of preparation of said quotation. (b) **TERMS OF PAYMENT:** Payments against invoices shall be due and payable thirty (30) days from the date of delivery to a carrier, or upon receipt of an invoice from Parkson, whichever first occurs. If in Parkson's opinion, Buyer's financial condition does not justify continuation of production or shipment on the terms of payment specified, Parkson may, upon written notice to Buyer, cancel or suspend any outstanding order or part thereof, unless Buyer shall promptly pay for all goods delivered or shall make advance payments to Parkson as it, at its option, shall determine. If Buyer delays shipment for any reason, date of readiness for shipment shall be deemed to be the date of shipment for payment purposes. If Buyer delays manufacture for any reason, a payment shall be made based on purchase price and percentage of completion, with the balance payable in accordance with the terms as stated. If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Parkson's right to immediate payment, be increased by 1½% per month on the unpaid balance, not to exceed the maximum amount permitted by law. If at any time in Parkson's judgment Buyer may be or may become unable or unwilling to meet the terms specified herein, Parkson may require satisfactory assurance or full or partial payment as a condition to commencing, or continuing manufacture, or in advance of shipment. (c) **TAXES:** Except for the amount, if any, of tax stated in a Parkson quotation, the prices set forth therein are exclusive of any amount for federal, state, local, excise, sales, use, property, in-country, import, VAT or similar taxes or duties. Such prices also exclude permit, license, customs and similar fees levied upon shipment of Parkson products.

III. SHIPMENT/STORAGE: (a) **SHIPMENT:** The anticipated shipment date(s) set forth in the quotation is/are approximate and subject to change. Notwithstanding other limitations set forth by Parkson, Parkson shall not be liable for any delays in shipment which are caused by events beyond the control of Parkson including, but not limited to, delays caused by inaccurate or incomplete data, changes or revisions in the work to be performed, tardy approval of drawings by Buyer, acts of Buyer or Buyer's agent, Force Majeure, accidents, strikes, inability to obtain labor or materials, or delay in transportation. Parkson shall have the right to extend the anticipated shipment date for up to ten (10) business days, for any reason, provided Parkson shall give Buyer written notice of such delay prior to the scheduled shipping date. Buyer's order will be crated for domestic truck shipment and Parkson assumes no responsibility for loss of, or damage to, the equipment following delivery to a carrier, who shall be deemed to be acting as agent for Buyer, and the equipment shall thereafter be at the Buyer's sole risk. It is Parkson's policy to ship its equipment "Bill Collect," and the carrier will mail its invoice(s) directly to Buyer's billing address, unless otherwise agreed to in writing. (b) **STORAGE:** Once Buyer has been notified that its order is ready for shipment, if Buyer requests that the order (in whole or in part) not be shipped until a later date, the equipment will be segregated from other inventory and Buyer shall execute Parkson's Transfer of Title form evidencing transfer of title and transfer of risk of loss from Parkson to Buyer pursuant to Section IV below. In the event that Buyer shall refuse to execute Parkson's Transfer of Title form and/or if the fabricator is unable to withstand storage of the equipment, Parkson shall have the right, at its sole discretion, to transfer the equipment to an intermediate storage facility, all at Buyer's cost, whereby transfer of title and risk of loss will be deemed to pass, pursuant to Section IV below, when the products are delivered to the carrier at the factory. All costs associated with shipping the equipment to said storage facility or from said storage facility to the job site (or any other site requested by Buyer) shall be the responsibility of Buyer. Buyer shall reimburse Parkson upon demand for any costs incurred by Parkson in connection with said storage, including without limitation, steps taken to protect the equipment from the elements, transport, storage facility fees, insurance, etc. Any delay in shipment requested or caused by Buyer or its agents will not affect the Terms of Payment above.

IV. TITLE & RISK OF LOSS: Parkson's prices are F.O.B. Parkson's Factory and are exclusive of taxes, shipping, handling and insurance. Title to all equipment and risk of loss, deterioration or damage shall pass to Buyer upon delivery to a carrier; except that a security interest in the equipment or any replacement shall remain in Parkson's name, regardless of mode of attachment to realty or other property, until the full purchase price has been received by Parkson. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Parkson's interest by adequately insuring the products against loss or damage from any external cause, including during any storage or transport, with Parkson named as insured or co-insured.



Any claim by Buyer against Parkson for shortage or damage occurring prior to delivery must be made in writing within ten (10) calendar days after receipt of shipment and accompanied by an original transportation bill signed by the carrier noting that carrier received goods from Parkson in the condition claimed. Parkson shall have the right to ship all goods at one time or in portions, within the time for shipping provided in such order, unless specifically requested in writing by the Buyer that these shipments be made in total. Any shipments returned to Parkson as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by Parkson, including any storage costs as set forth in Section III above.

V. ERECTION: Unless otherwise agreed in writing, products are assembled, installed and/or erected by and at the full expense of Buyer.

VI. CANCELLATION & BREACH: Buyer agrees that Parkson products are specially manufactured goods that are not suitable for sale to others in the ordinary course of business. Therefore, purchase orders placed with Parkson cannot be canceled without recourse, nor shipments of goods made up, or in process, be deferred beyond the original shipment dates specified, except with Parkson's written consent and upon terms which shall indemnify Parkson against all loss. In the event of cancellation or the substantial breach of the agreement between Buyer and Parkson, including without limitation, failing to make payment when due, Buyer agrees that Parkson will suffer serious and substantial damage which will be difficult, if not impossible, to measure, both at the time of entering the agreement and as of the time of such cancellation or breach. Therefore, the parties agree that upon such cancellation or breach, the Buyer shall pay to Parkson the sums set forth below which Parkson and Buyer do hereby agree shall constitute agreed and liquidated damages in such event:

- a. If cancellation or breach shall occur after the acceptance of the purchase order but prior to mailing of general arrangement drawings by Parkson to Buyer, liquidated damages shall be 10% of the selling price.
- b. If cancellation or breach shall occur within thirty (30) days from the mailing of general arrangement drawings by Parkson to Buyer, the liquidated damages shall be 30% of the selling price.
- c. If the cancellation or breach occurs after thirty (30) days from the mailing of general arrangement drawings by Parkson to Buyer, but prior to notification that the order is ready for shipment, the liquidated damages shall be the total of 30% of the selling price plus the expenses incurred, cost of material, and reasonable value of the work expended to fill the respective order by Parkson's engineers and other employees, agents and representatives after the mailing of general arrangement drawings by Parkson to Buyer. All sums will be determined at the sole reasonable discretion of Parkson provided, however, that the total liquidated damages under this provision shall not exceed the total selling price.
- d. If cancellation or breach shall occur after Parkson has notified Buyer that the order is ready for shipment, then the liquidated damages shall be the total selling price.

VII. DRAWINGS & SPECIFICATIONS: In the event that drawings are sent to Buyer for approval after an order is placed, the drawings must be returned marked "Approved" or "Approved As Noted" within twenty (20) calendar days after receipt unless otherwise noted. In the event that Buyer's written comments are not given within the twenty (20) day period, Parkson shall deem the items approved.

VIII. CORRECTIVE WORK & "BACK CHARGES". In no event shall any work be done, or services or material be purchased or expense otherwise incurred by the Buyer for the account of Parkson until after full and complete particulars (including an estimate of material cost) have been submitted in writing and approved in writing by Parkson. Parkson must be given the opportunity to discuss and research alternative methods to lower the costs involved in such corrective work. Unless agreed-upon in writing by Parkson, Parkson will not be liable for labor costs, overhead, administrative costs, interest or any other consequential or indirect costs Buyer incurs. Returned items will not be accepted unless Parkson has previously agreed to such return in writing and supplied written return-shipping instructions to Buyer.

IX. SELECTION OF MATERIALS: Because all Parkson products are specially manufactured products, the material make-up of many of Parkson's products varies from project to project. The determination of the materials' suitability and adaptability (including without limitation, paints and/or coatings) to the specific needs of the Buyer is solely the Buyer's choice and responsibility.

X. CONFIDENTIAL INFORMATION & IMPROVEMENTS: The design, construction, application and operation of Parkson's products, services and relevant documentation embody proprietary and confidential information; therefore, Buyer will maintain this information in strict confidence, will not disclose it to others, and will only use this information in connection with the use of the products or to facilitate the provision of services sold by Parkson. Buyer will not copy or reproduce any written or printed materials or drawings furnished to Buyer by Parkson. Buyer agrees to immediately return all confidential material to Parkson if requested in writing by Parkson. Buyer will not copy any information provided by Parkson or make any design drawings of Parkson's equipment and will not permit others to copy or make any design drawings of the equipment. Parkson shall have a royalty-free license to make, use and sell, any changes or improvements in the products invented or suggested by Buyer or its employees. Buyer acknowledges that a remedy at law for any breach or attempted breach of this Section will result in a harm to Parkson for which monetary damages alone will not be adequate. Buyer covenants and agrees that neither it nor any of its affiliates will oppose any demand for specific performance and injunctive and other equitable relief in case of any such breach or attempted breach. Notwithstanding anything to the contrary herein, Parkson may seek enforcement of any breach of this Section without the necessity of complying with the provisions regarding resolution of disputes herein.

XI. FIELD SERVICE: Field Service included in the quotation will only be scheduled upon written request and may be subject to credit approval. Should the Buyer have outstanding balances due Parkson, no startup / field service will be scheduled until such payments are received by Parkson. The Buyer assumes all responsibility for the readiness of the system when it requests startup service. Should Parkson's Field Service Engineer arrive at the jobsite and determine that the system cannot be started up within a reasonable time, Parkson shall have the option to bring the Field Service Engineer home and bill the Buyer for time, travel and living expenses. Additional field service is available from Parkson at the prevailing per-diem rate at the time of the



request for service plus all travel and living expenses, portal-to-portal. A purchase order or change order will be required prior to scheduling this additional service.

XII. LIMITATION OF LIABILITY: Unless expressly agreed to in writing by Parkson, all damages not direct and actual in nature, including without limitation, consequential, incidental, indirect, exemplary and punitive damages, shall be expressly prohibited damages. Such prohibited damages include, but are not limited to, lost rent or revenue; rental payments; costs (increased or not) of administration or supervision; costs or delays suffered by others unable to commence work or provide services as previously scheduled for which a party to this contract may be liable; increased costs of borrowing funds devoted to the project (including interest); delays in selling all or part of the project upon completion; damages caused by reason of Force Majeure or acts of God (with the broadest statutory or court of law definition possible); termination of agreements to lease or buy all or part of the project, whether or not suffered before completion of services or work; forfeited bonds, deposits, or other monetary costs or penalties due to delay of the project; interest for any reason assessed to Buyer; increased taxes (federal, state, local, or international) due to delay or recharacterization of the project; lost tax credits or deductions due to delay; impairment of security; attorney and other legal fees for any reason assessed to Buyer, loss of use of the Equipment or any associated Equipment, costs of substitute Equipment, facilities or services, down time costs, claims of customers of Buyer for such other damages; or any other indirect loss arising from the conduct of the parties. Parkson only agrees to responsibility for damages from proven negligent and willful acts of its direct employees only.

XIII. APPLICABLE LAWS & GOVERNING LAW: To the best of Parkson's knowledge, Parkson products comply with most laws, regulations and industrial practices; however, Parkson does not accept responsibility for any state, city or other local law not specifically brought to Parkson's attention. For OSHA compliance, (1) Parkson is only liable for those OSHA standards that are in effect as of the date of the quotation, and to the extent they are applicable to the performance of Parkson. (2) Parkson is only responsible for the physical characteristics of the product(s) and not for the circumstances of the use of the product(s). (3) Parkson's liability through any noncompliance to OSHA shall be limited to the cost of modifying the product(s) or replacing the non-complying product(s) or component(s) after receipt of prompt written notice of noncompliance. The rights and obligations of Buyer and Parkson shall be governed by and interpreted in accordance with the substantive laws of the state of Florida including the uniform commercial code of Florida, excluding conflicts of law and choice of law principles.

XIV. DISPUTE RESOLUTION: Any issue, difference, claim or dispute ("Action") that may arise out of or in connection with the project referenced in the quotation, including these terms and conditions, shall be first resolved by negotiation at the highest executive levels between the Buyer and Parkson. If said negotiation is unsuccessful, any said Action or any transactions contemplated hereby or in the Quotation shall be finally settled under BINDING ARBITRATION in Broward County, Florida. Any such arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association and shall be overseen by one (1) single arbitrator. Buyer and Parkson shall agree upon a single arbitrator or, if Buyer and Parkson cannot agree upon an arbitrator within thirty (30) days, then the Buyer and Parkson agree that the American Arbitration Association shall appoint a single arbitrator. In the event that an Action is brought, the prevailing party shall be entitled to be reimbursed for, and/or have judgment entered with respect to, all of its costs and expenses, including reasonable attorney's fees' and legal expenses. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction.

XV. PATENTS: Parkson shall indemnify Buyer against any judgment for damages and costs which may be rendered against Buyer in a suit brought on account of the alleged infringement of any United States patent by any product supplied by Parkson, unless (a) the alleged infringement occurs as a result of any alteration or modification to the product or the use of the product in combination with the products or services of any party other than Parkson, or (b) the product was made in accordance with materials, designs or specifications furnished or designated by Buyer, in which case Buyer shall indemnify Parkson against any judgment for damages and costs which may be rendered against Parkson in any suit brought on account of the alleged infringement of any United States patent by such product or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and an opportunity be given to such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. Parkson shall in no event be liable to Buyer for special, indirect, incidental or consequential damages arising out of allegation of patent infringement.

XVI. MECHANICAL WARRANTY: For a period of one (1) year following the Equipment shipment date ("Warranty Period"), Parkson's Equipment is limitedly warranted to be free from defective material and workmanship, under normal use and service and when installed, operated and maintained in accordance with installation instructions, this policy and maintenance/operating procedures. To make claim under this Warranty, Buyer must notify Parkson within ten (10) business days after the date of discovery of any nonconformity and make the affected Equipment immediately available for inspection by Parkson or its service representative. Parkson Equipment may be deemed nonconforming only by an authorized Parkson representative. Returns will not be accepted unless Parkson has authorized said return in writing. If Parkson's inspection indicates nonconforming materials and/or workmanship, the Equipment will, at Parkson's option, either be repaired or replaced without charge. Upon receipt of Parkson's written consent, Equipment may be promptly returned to Parkson, F.O.B. its factory. However, under certain circumstances, Parkson may decide, in its sole discretion, to repair or replace the Equipment at the Project site. Buyer hereby agrees to provide Parkson, its employees and/or representatives, free of charge, on-site access to the Project site, and any necessary utilities and plant personnel needed by Parkson for the purpose of repairing and/or replacing nonconforming Equipment per this Warranty.

The following will void this Warranty:

- (A) Equipment is used for purposes other than those for which it was designed;
- (B) Equipment is not used in accordance with generally approved practices;
- (C) Disasters, whether natural or manmade, such as fire, flood, wind, earthquake, cave-in, lightning, war, or vandalism;



- (D) Unauthorized alterations to or modifications of the Equipment not approved by Parkson, in writing;
- (E) Abuse, neglect or misuse of Equipment, including without limitation, operation of Equipment after a defect is discovered;
- (F) Operation of Equipment by persons not properly trained for that purpose;
- (G) Failure to operate the Equipment in accordance with Parkson's specifications, O&M manuals or other written guidelines; and/or
- (H) Failure to perform regular cleaning, inspection, adjustment and/or preventative maintenance.

BE ADVISED: Parkson is not liable for any corrective work or expenditure that has not been authorized by Parkson in writing prior to the commencement of such work and prior to committing to such expenditures. Inspection service calls, requested by Buyer, where no evidence of nonconforming materials and/or workmanship is found, will be invoiced to the Buyer at Parkson's current per diem, plus all travel and living expenses. Onsite labor and freight are not covered by this Warranty. This Warranty does not cover normal wear and tear. Following a Warranty claim, verification of proper operation and maintenance is required. Physical damage due to external forces and/or accident is not covered by this Warranty. The effects of corrosion and unforeseeable influent characteristics are excluded from this Warranty. Actions by 3rd parties in causing nonconformity of the Equipment are not covered under this Warranty.

THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER GUARANTEES AND WARRANTIES OF ANY KIND WHATSOEVER, WRITTEN, ORAL OR IMPLIED; ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

XVII. INDEMNIFICATION: Buyer shall comply and require its employees to comply with all instructions given by Parkson regarding installation, use and maintenance of the Equipment sold by Parkson and shall require its employees to use reasonable care and all safety devices in the operation and maintenance of said Equipment. Buyer shall not remove or permit removal or modification of any safety device, warning sign or label. Buyer shall immediately give Parkson written notice of any personal injury or property damage arising out of the use of the Equipment and cooperate with Parkson in investigating any such accident or malfunction. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind and nature (including attorney's fees) for personal injury or property damage arising from or in any way connected with the operations, activities or use of the Equipment sold by Parkson if Buyer fails to fulfill any of the foregoing obligations. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) which may be asserted against Parkson and its suppliers by any person relating to any portion of the Equipment which includes Buyer's existing equipment or equipment furnished by Buyer and to defend Parkson and its suppliers at Buyer's expense against any suit which may be commenced relating to the foregoing. Buyer agrees to indemnify and hold Parkson and its suppliers harmless from any and all claims, demands, liabilities, causes of action, suits, costs and expenses of any kind or nature (including attorney's fees) for loss or damage to persons or property, other than the Equipment sold hereby or Buyer's possession or use of said Equipment.

XVIII. MISCELLANEOUS: Parkson does not assume responsibility for nor warrant the performance or accuracy of Buyer's furnished design, design criteria, or specifications. The parties agree that the foregoing terms and conditions constitute the entire terms and conditions between Buyer and Parkson and that there are no other agreements, terms or conditions, expressed or implied, unless otherwise agreed to in writing by Parkson. The terms and conditions herein shall supersede any terms and conditions of any other document that may apply to the transaction between the Buyer and Parkson. This document may not be modified or superseded other than by an instrument in writing signed by both Buyer and Parkson. This document shall be binding upon and inure to the benefit of Buyer and Parkson and their heirs, assignees, legal representatives and the project Owner for the project referenced in the quotation. The invalidity or non-enforceability of any particular provision of this document shall not affect the other provisions hereof, and this document shall be construed in all respects as if such invalid or unenforceable provisions were omitted.