



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.13.

7/7/2020

Subject:

Approval of Purchase Order for sluice/weir gates at South Central Water Reclamation Facility

Fiscal Impact:

\$400,800.00

Dept/Office:

Utility Services

Requested Action:

Request approval of purchase order to Alfa Laval, Inc. for Sluice/Weir Gates at the South Central Water Reclamation Facility and any associated budget changes

Summary Explanation and Background:

Viera is expanding to the south and as result will be bringing a 24-inch FM up to our South Central WWTP in the FPL corridor with the expectation that the County will be ready to allow them to connect. Utility Services is working on several projects to accomplish this task.

Utilities Services submitted a BCR in the amount of \$800,000 to address the purchase and installation of the mentioned weirs. The BCR was approved by the Commission on the May 5, 2020 agenda and recorded by the Clerk of the Court on May 19, 2020.

The sluice/weir gates are part of this project. The sluice/weir gates are nonoperational and need to be replaced within the Oxidation Ditch process. The purchase and installation of these gates will allow South Central's plant staff to have better process and flow control of the biological process. Alfa Laval sluice gates were acquired and installed in the recent plant expansion at South Central and Utility Services desires to standardize throughout. This is a sole source purchase.

Clerk to the Board Instructions:

Please e-mail Clerk Memo to rose.lyons@brevardfl.gov <<mailto:rose.lyons@brevardfl.gov>> when ready and mail originals to Utility Services.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 8, 2020

M E M O R A N D U M

TO: Edward Fontanin, Utility Services Director

RE: Item F.13., Approval of Purchase Order for Sluice/Weir Gates at South Central Water Reclamation Facility

The Board of County Commissioners, in regular session on July 7, 2020, approved the purchase order to Alfa Laval, Inc. for sluice/wier gates at the South Central Water Reclamation Facility; and approved any associated budget changes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Donna Scott
Kimberly Powell, Deputy Clerk

/sm

cc: Finance
Budget

**Budget Change Request (Form BCC-114)****Brevard County Budget Office****Fund:** 4150-Water Resources Operations & Maint.**Department:** Utility Services Department**Date:** 5/5/2020**Program:** COUNTY CAPITAL**Type of Request:** Line Item Transfer**Revenue Change:****Expenditure Change:**

Reserves-Operating (\$800,000)

Operating Expenses \$800,000

Total: \$0**Total:** \$0**Justification:**

The Viera Company plans to continue development south of the South Central Regional Wastewater Plant. To accommodate the additional connections, the department has begun a project to design and build an additional force main from the headworks at the plant to accommodate the anticipated residential and commercial connections. In addition to the system extension, the department also needs to perform additional maintenance at the plant in preparation for the additional connections. The tanks that are used to process the wastewater are due for cleaning. A crack in one of these tanks has been identified that must be repaired. The cost of the cleaning and repairs is estimated at \$300,000.

Also, the plant utilizes a weir system to control the flow of the wastewater through the system. The weir gates that control the flow have exceeded their life expectancy and are not allowing staff sufficient control of the flows through the treatment system. The cost estimate for the gate replacement is \$500,000. Funding is available in department reserves.

Alternative:

The Viera Company will be unable to connect additional properties to the wastewater system in the future.

SAP Document Number:

50014744

Approval:

EGFONTANIN

Approved

05/04/2020

CLROLLYSON

Approved

05/04/2020

JJHAYES

Approved

05/04/2020

JDENNINGHOFF

Approved

05/04/2020

FBABBATE

Approved

05/05/2020

APPROVED IN REGULAR SESSION
BOARD OF COUNTY COMMISSIONERS

THIS 19 DAY OF May 2020

Scott Ellis, Clerk

BY: Deborah Huns a.c.

377

July 2, 2020

To: All Bidding Contractors.
FTA: Estimating Department or Project Manager.

Re: Brevard County, South Central Plant, FL
Specification: None, replacement gates
Alfa Laval Quote No.: 02172020 r3



10470 Deer Trail Drive
Houston, TX 77038 - USA
(800) 362 - 9041

Dear Gentlemen,

We are pleased to offer our bid, for the supply of the specified Coplastix Sluice/Weir Gate(s) to meet the intent and fulfill the requirements as detailed in the specification, based upon our Coplastix Design. We also include our **Ten-Year Warranty**, which is and has proven to be a great attribute to the longevity and quality of our equipment. The Coplastix equipment offered comes complete, ready for installation by the contractor unless noted otherwise. If you disagree with the take-off contained herein, you must advise us.

1. FRAME.

316L stainless steel, 5/16 minimum thickness. Frames are wall mounted against a 1" nominal grout base, no thimbles or flanges are needed or included.

2. SEALS

Sluice gates frames shall be fitted with fixed sealing faces that are mounted in the frame sides. Seals shall be molecularly incompatible with the Disc face and shall have a co-efficient of friction of 0.10 or less.

3. DISCS

Shall be manufactured from suitably reinforced composite plastic materials. The outer skin material shall have a minimum thickness of 1/8" and is non-toxic, ultra-violet light stabilized. The internal steel reinforcing members shall be designed to adequately withstand the hydraulic forces and/or the mechanical operating loads that will be imposed upon the Disc. The Disc shall be designed for a deflection of less than 1/1000 of the span (Width of Opening/1000).

4. LEAKAGE RATES

Per Specification (AWWAC563), no factory water testing will be performed as site testing will need to be done and passed, normal factory inspection and certification report issued.

Ashbrook
Simon-Hartley

Item #1 BNR Chamber

Qty.: Two (2)
Size: 180" x 36"
Gate: Wall mounted Coplastix Weir Gate, suitable for 3' on seating Head pressure.
Invert to floor 43" approx.
Operator: Gearbox assembly mounted on a frame-mounted pedestal at floor level.
Stem: Twin Rising 316 stainless steel.

Item #2 Splitter Box

Qty.: Four (4)
Size: 60" x 36"
Gate: Wall mounted Coplastix Weir Gate, suitable for 3' on seating Head pressure.
Invert to floor 40" approx.
Operator: Gearbox assembly mounted on a frame-mounted pedestal at floor level.
Stem: Rising 316 stainless steel.

Item #3 Chlorine Contact Tank Inlet/Outlet/Effluent

Qty.: Five (5)
Size: 30" x 30"
Gate: Wall mounted Coplastix Sluice Gate, suitable for 10' on/off seating Head pressure. Invert to floor 125" approx.
Operator: Gearbox assembly mounted on a frame-mounted pedestal at floor level.
Stem: Rising 316 stainless steel.

NOTES AND EXCEPTIONS:

- A. Equipment offered is Coplastix Standard Design.
- B. Alfa Laval excludes grout, packers, etc. To be provided by contractor.
- C. Adhesive anchor bolts: 316 stainless steel hardware, included. Adhesive by contractor.
- D. **Start-up service included with Equipment Price.** Two trips with two days each trip.

DO NOT assume any item not listed above is included in our proposal.

Equipment Price = \$400,800.00

Contact (MTS Environmental) Tel # (941) 773-5051 for pricing.
F.O.B. Houston, Texas, FFA to job site. **NO TAXES INCLUDED.**

July 2, 2020
Brevard County, South Central Plant, FL
Alfa Laval Quote No.: 02172020 r3
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Unless otherwise specified in this proposal, all installation of equipment supplied by Alfa Laval, Inc. shall be installed by others.

Taxes:

The quoted price does not include any local, state or federal taxes, permits or other fees. Any taxes or fees that may apply must be added to the quoted price and paid by the buyer.

Proposal Acceptance:

This proposal is offered for acceptance within thirty (30) days from date of this quotation or date of bid opening, whichever is the later date. Prices are subject to review thereafter. Prices are firm, based upon receipt of a Letter of Intent or Purchase Order and notice to proceed within this thirty (30) day period and the review and return of submittal drawings to Alfa Laval within thirty (30) days. Delays caused by slow return of submittals and/or other manufacturing delays caused by the contractor, owner, owner's agent or engineer may result in additional charges of 1% per month for such delays or part thereof.

Submittal Drawings (2 to 3 weeks from receipt of written Purchase Order)

Mechanical submittal and drawings on the preceding equipment will be submitted in accordance with the required delivery date of the equipment and after receipt of a firm purchase order.

Note: A purchase order signed by both Alfa Laval, Inc. and the purchase order originator must be executed prior to any submittal being forwarded.

Shipment:

Shipment on the preceding equipment can be made within twelve (12) to fourteen (14) weeks from receipt of approved submittals.

Payment Terms:

100% net 30 days (subject to credit approval) and as such no provision for retainage will be allowed under the terms of this project. These payment terms are not contingent upon payment from owner to Purchaser. Shipments such as embedded metal or partial items will be invoiced as ~~shipped on a prorated price to be determined by Alfa Laval, Inc.~~

If Purchaser delays shipment, Alfa Laval, Inc. may invoice and pass title to the Purchaser; Purchaser agrees to remit the amount due at the times stated, as if the equipment had shipped. All costs of storage shall be at the Purchaser's expense.

Escalation Charges:

In the event that delivery of equipment cannot be made on the scheduled delivery date agreed upon between Alfa Laval and buyer and as evidenced by the terms of the contract, due to buyer delay, Alfa Laval reserves the right to assess reasonable escalation charges to the project at the rate of 1% per month of the contract value for each month that the project is delayed.

Terms:

Alfa Laval's Standard Terms and Conditions are enclosed and apply in their entirety. All applicable sales, use or other taxes are to be paid by buyer. If any taxes are to be paid by seller, the quotation price shall automatically be increased by the same amount. Failure to pay invoices promptly when due nullifies Alfa Laval, Inc. obligation to perform work under warranty, installation and start-up in a timely manner.

The contractor explicitly agrees that subject to acceptance by the consulting engineer and/or the owner, Alfa Laval, Inc. may substitute a stand-by letter of credit in lieu of cash retainages required in the plans and specifications and contract documents, and 100% of the cash released by such acceptance will flow through immediately to Alfa Laval, Inc. All orders are subject to credit approval prior to acceptance of contract and/or purchase order.

General Notes:

There is no provision included in the quoted price, unless noted, for field erection supervision, tests, inspections or adjustment of equipment. If factory representative is required for any of these services, please refer to "Service Terms" enclosed. The equipment offered by Alfa Laval, Inc. is our standard design, materials and manufacture. In the event that these items of equipment are subject to any alteration in design or materials or manufacture by the contractor, owner, owner's agent or engineer, such alterations shall be subject to change in the contract price and/or delivery schedule.

We wish to thank you for the opportunity of offering this proposal. Should you have any questions, please feel free to contact our representative or us noted below.

Sincerely,

Doug Thomas

Doug Thomas
Business Development Manager, Fluid Control

cc. MTS Environmental Inc. (Eric Peters), Alfa Laval Local Representative

TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale ("Terms and Conditions") apply to all quotations, orders, and contracts for Alfa Laval Inc. products (hereafter "Equipment") and associated services ("Services") As used in these Terms and Conditions, the word "Equipment" includes all hardware, parts, components, software and options.

1. **ACCEPTANCE:** Our sale to you is limited to and expressly made conditional on your assent to these Terms and Conditions and, if applicable, on the attendant quotation, both of which form a part of the contract between us and which supersede and reject all prior agreements, representations, discussions or negotiations, whether written or oral, with respect to this sale and any conflicting terms and conditions of yours, whether or not signed by you. Any terms and conditions contained in your purchase order or request for quotation or other form which are different from, in addition to, or vary from these Terms and Conditions are expressly rejected, shall not be binding upon us, and are void and of no force or effect. These Terms and Conditions may not be changed except by the written agreement of both parties.

2. **PRICES:** Unless otherwise specified in writing, all quoted prices are in U.S. Dollars and are firm for thirty (30) days from the date of offer. Prices quoted are exclusive of taxes, freight and insurance, and you agree to pay any and all sales, revenue, excise or other taxes (exclusive of taxes based on our net income) applicable to the purchase of Equipment. If you claim an exemption from any such taxes you shall provide us with a tax exemption certificate acceptable to the taxing authorities.

3. **DELIVERY:** Dates for the furnishing of Services and/or delivery or shipment of Equipment are approximate only and are subject to change. Quoted lead times are figured from the date of receipt of complete technical data and approved drawings as such may be necessary. We shall not be liable, directly or indirectly, for any delay in or failure to deliver caused by carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, failure or delay in obtaining materials from ordinary sources, fires, floods, storms, accidents, or other acts of God or *force majeure*, by any statute, regulation, administrative order or decree or order or judgment of a court of law or other causes beyond our reasonable control. Unless otherwise specifically agreed in writing by us, in no event shall we be liable for any damages or penalties whatsoever, or however designated, resulting from our failure to perform or delay in performing due to any of the causes specified in this paragraph 3.

4. **SHIPMENT, RISK OF LOSS, TITLE:** All sales are made F.O.B. Alfa Laval shipping point, unless otherwise noted. Duty, brokerage fees, insurance, packing and handling as applicable are not included unless otherwise noted. Our liability for delivery ceases upon making delivery of Equipment to the carrier at the shipping point in good condition. The carrier shall be your agent. Risk of loss shall pass to you upon such delivery. Regardless of the delivery term specified, we shall retain title to the Equipment until final payment thereof has been made.

5. **CREDIT AND PAYMENT:** Payment terms are (30) days net, unless agreed otherwise by us in writing. *Pro rata* payments shall become due with partial shipments. Any discount period which may be granted by us begins on the invoice date and all payments are due 30 days after the invoice date. All payments shall be made without deduction, deferment, set-off, lien or counterclaim of any nature. All amounts due not paid within 30 days after the date such amounts are due and payable shall bear interest at the lesser of 1.5 percent per month or the maximum rate of interest allowed by law. We reserve the right at any time to suspend credit or to change credit terms provided herein, when, in our sole opinion, your financial condition so warrants. Failure to pay invoices when such invoices are due and payable, at our election, shall make all subsequent invoices immediately due and payable irrespective of terms, and we may withhold all subsequent deliveries until the full account is settled. We shall not, in such event, be liable for delay of performance or nonperformance of contract in whole or in part subsequent to such event.

6. **SECURITY AGREEMENT:** You hereby grant us a security interest in the Equipment, including a purchase money security interest, and in such materials, proceeds and accessories thereof, to secure payment of the purchase price of the Equipment. You authorize us to file or record a purchase order or copy thereof or any UCC financing statement showing our interest in the Equipment in all jurisdictions where we may determine filing to be appropriate, and you agree to sign all such documents reasonably related thereto promptly following our request. You will not encumber the Equipment with any mortgage, lien, pledge or other attachment prior to payment in full of the price therefor.

7. **CANCELLATIONS AND CHANGES:** Orders which have been accepted by us are not subject to cancellation or changes in specification except upon prior written agreement by us and upon terms that will indemnify us against all losses resulting from or arising out of such cancellation or change in specifications. In the absence of such indemnification, we shall be entitled to recover all damages and costs of whatever nature permitted by the Uniform Commercial Code.

8. **DEFERRED SHIPMENT:** If shipment is deferred at your request, payment of the contract price shall become due when you are notified that the Equipment is ready for shipment. If you fail to make payment or furnish shipping instructions, we may either extend the time for so doing or cancel the contract. In case of deferred shipment at your request, storage and other reasonable expenses attributable to such delay shall be payable by you.

9. **EQUIPMENT WARRANTY AND REMEDY:**

(a) For new Equipment only, we warrant to you that the Equipment that is the subject of this sale is free from defects in design (provided that we have design responsibility), material and workmanship. The duration of this warranty is twelve (12) months from start-up or eighteen (18) months from delivery to you, whichever occurs first (the "Warranty Period"). If you discover within the Warranty Period a defect in design, material or workmanship, you must promptly notify us in writing. Within a reasonable time after such notification, we shall repair, replace, or, at our option, refund you the price of the defective Equipment or part thereof.

(b) For repairs, parts and Services provided by us, we warrant to you that the repairs, parts and Services we provide to you will be free from defects in material and workmanship. The duration of this warranty is ninety (90) days from as applicable (i) the date the Equipment which required the repairs, parts or Services is returned to you by us, (ii) the date of your receipt of the part, or (iii) the date of completion of the repair or other Services, if performed at your facility. If during this ninety-day period you discover a defect in the repairs, parts or Services you must promptly notify us in writing and we shall correct such defect with either new or used replacement parts or reperform the Services as applicable. If we are unable to correct the defect after a reasonable number of attempts, we will provide a refund of the price paid for the defective repair, parts or Services.

(c) All warranty service is subject to our prior examination and approval and will be performed by us at your facility or at service centers designated by us. All transportation to and from the designated service center will be at our expense. The remedies set forth above are your exclusive remedies for breach of warranty. Unless otherwise agreed in writing by us, our warranty extends only to you and is not assignable to or assumable by any subsequent purchaser, in whole or in part, and any such attempted transfer shall render all warranties provided hereunder null and void and of no further force or effect.

(d) The warranties set forth above are inapplicable to and exclude any product, components or parts not manufactured by us or covered by the warranty of another manufacturer. We shall have no responsibility for defects, loss or damage to the extent caused by (i) normal wear and tear, (ii) your failure to follow all installation and operation instructions or manuals or to provide normal maintenance, (iii) repairs or modifications by you or by others not under our direct supervision, or (iv) a product or component part which we did not design, manufacture, supply or repair.

(e) **DISCLAIMER OF IMPLIED WARRANTIES.** THE WARRANTIES SET FORTH ABOVE AND IN SECTION 12 BELOW ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. **LIMITATION OF LIABILITY:** In no event shall we be liable, and you hereby waive any claims against us and release us from liability to you, for any indirect, special, punitive, incidental, or consequential damages whatsoever based upon breach of warranty, breach of contract, negligence, strict tort, or any other legal theory. In no circumstance, shall we be liable for, however such damages are characterized, loss of profits, loss of savings or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of any substitute Equipment, facilities or services, downtime, or loss of prospective economic advantage. OUR AGGREGATE LIABILITY FOR FAILURE TO PERFORM, BREACH OF WARRANTY OR BREACH OF OTHER CONTRACTUAL OBLIGATIONS SHALL NOT EXCEED THE TOTAL PRICE PAID TO US FOR THE EQUIPMENT AND SERVICES THAT ARE THE SUBJECT OF ANY CLAIM BY YOU.

11. **OWNERSHIP:** All drawings, designs, specifications, data and other proprietary rights supplied by us (including without limitation in connection with the Equipment) have been prepared or assembled by us and are (and shall remain) exclusively our property, and upon our request you agree to execute any additional documents needed to give effect to the foregoing. Such drawings, designs and specifications have been furnished in order to provide full documentation and on the condition that they shall not be disclosed, reproduced or copied in any manner whatsoever, in whole or in part, except for your internal use as necessary, and upon the further condition that, as our sole property, they shall not be used for furnishing information and/or disclosed, in whole or in part, to others or otherwise for any purpose not specifically authorized in a writing signed by one of our corporate officers.

12. **PATENT INFRINGEMENT**

(a) We make no express or implied warranties of non-infringement with respect to the Equipment. We will, however, defend, indemnify and hold you harmless from any third party apparatus claims based upon an issued U.S. patent to the extent such claim relates to the Equipment supplied and sold to you; provided, however, that we undertake no indemnification in respect of third-party rights (i) where the alleged patent infringement is based upon or related to any method, process or design claims in third-party U.S. patents, any combination of the Equipment with other equipment not supplied by us, or any modifications of the Equipment made by you and not approved by us, or (ii) to the extent the alleged infringement is directly attributable to the negligence or intentional misconduct of you or otherwise for which you are obligated to indemnify us for under paragraph 12(c).

(b) We shall assume defense of a claim at our expense in accordance with these Terms and Conditions, provided you shall notify us within 30 days of your receipt of notice of an alleged third-party claim that you believe would entitle you to patent infringement indemnification pursuant to paragraph 12(a). You acknowledge and agree that we shall have the sole right to settle or otherwise compromise such a third-party claim, including but not limited to the right to either (i) modify the Equipment to avoid infringement if you are agreeable to the modification, (ii) repurchase the Equipment from you at a price equal to the then-current fair market value of the Equipment, or (iii) secure rights by assignment or license to permit continued use of the Equipment.

(c) If a third party charges us with patent infringement relating to Equipment sold by us to you, we shall have the right to either (i) modify the Equipment to avoid infringement if you are agreeable to the modification, (ii) repurchase the Equipment from you at a price equal to the then-current fair market value of the Equipment, or (iii) secure rights by assignment or license to permit continued use of the Equipment. If a third party charges us with patent infringement on the bases set forth in paragraph 12(a)(i) or (ii), you shall indemnify and hold us harmless for all expenses as well as any awards of damage assessed against us, and, without limiting any of our other rights and remedies available at law or in equity, we shall also have the right to modify or repurchase the

Equipment or to secure rights for continued use by way of assignment or license as set forth in this paragraph.

13. **INSPECTION:** Upon prior written notice, you may make reasonable inspections of Equipment at our facility. We reserve the right to determine the reasonableness of the request and to select an appropriate time and location for such inspection. You agree to execute appropriate confidentiality provisions upon our request prior to visiting our facility. All costs of inspection shall be solely determined by us and shall be payable by you. No inspection or expediting by you at the facilities of our suppliers is authorized.

14. **SOFTWARE PROVISIONS:** If software is provided hereunder (whether such is integrated into the Equipment or otherwise operates alongside the same), you are hereby granted a non-exclusive, non-sublicensable, non-transferable, royalty free license to access and use such software as provided and as intended with our Equipment. Without limiting the foregoing, under the foregoing license you may specifically: (i) use our software in machine readable object code only and only with the Equipment provided; (ii) copy our software into any machine readable object code form solely for back up purposes in support of your use of our software on the Equipment provided in accordance with these Terms and Conditions; and (iii) create one additional copy of the software for archival purposes only. This license may only be assigned, sublicensed or otherwise transferred by you with our prior written consent. You hereby recognize and acknowledge that the software provided to you hereunder comprises valuable trade secret and/or copyright property of Alfa Laval (or its licensors) and you covenant that you will take adequate precautions against access to the software by, or disclosure of the software to, anyone not authorized hereunder to use or have access to the software as contemplated herein. The software is subject to the confidentiality obligations set forth below in paragraph 15.

15. **CONFIDENTIALITY:** Subject to any non-disclosure or confidentiality agreement already in effect between us, any drawings, data, software or other information exchanged between us is proprietary or confidential to us and shall not be used or disclosed by you without our prior written consent. Confidential information shall not be any information that (i) is known previously to you under no obligation of secrecy; (ii) becomes known to the public through no breach of an obligation of secrecy by you; or (iii) is independently developed by you without use or reference to any of the confidential information or materials provided to you by us.

16. **INAPPLICABILITY OF CISG:** The parties specifically agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any sale or order or the contract between us.

17. **GOVERNING LAW & VENUE:** These Terms and Conditions and any dispute or claim arising out of or related to an order or the contract between us shall be finally decided in accordance with the laws of the Commonwealth of Virginia, without giving effect to the provisions thereof relating to conflict of laws. You agree that the venue for any such dispute shall lie in the United States District Court for the Eastern District of Virginia, Richmond Division. In the event that federal jurisdiction cannot be established pursuant to 28 U.S.C. §§ 1331 or 1332, the venue for any such dispute shall lie in the Circuit Court of Henrico County, Virginia. You expressly submit and waive any objection to the sole and exclusive jurisdiction of such courts.

18. **GENERAL:** All previous agreements or understandings between us, either oral or written, with regard to the subject order, with the exception of a pre-existing non-disclosure agreement between us, are void and these Terms and Conditions constitute the entire agreement between us with respect to the matters addressed herein. Neither of us shall assign an order or contract to which these Terms and Conditions apply without the prior written consent of the other party, which consent shall not be unreasonably withheld. If any provision of these Terms and Conditions is held to be invalid or unenforceable, such holding shall not affect the validity or enforceability of any other provision herein. No waiver by either of us of any default or breach by the other party will operate as or be deemed a waiver of any subsequent default or breach.