



City of Ketchum

September 3, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Purchase Order 20390 With C.H. Spencer, LLC for Submersible Pump

Recommendation and Summary

Staff is recommending the council approve Purchase Order 20390 with C.H. Spencer, LLC and adopt the following motion:

“I move to approve Purchase Order 20390 with C.H. Spencer, LLC for the purchase of a submersible pump for the wastewater treatment plant in the amount of \$13,720.00.”

The reasons for the recommendation are as follows:

- The new pump will replace a larger, less efficient pump. This will help us in our sustainability goals for the wastewater treatment plant and the City.
- The old pump being replaced has sustained damage which may cause it to fail at any time.
- The pump being replaced was purchased from a manufacturer that is no longer in business making repairs and replacement parts expensive and difficult to find.

Introduction and History

The effluent pumping station at the treatment plant was built in 2004. It was originally designed with three identical pumps with a 40-horsepower motor on each pump. Only one pump runs at any given time. Current flows do not require a pump of this size all the time. This new pump is a smaller 17-horsepower pump that would run a majority of the time with one of the larger pumps taking over when high flows dictate. This pumping model was instituted in our influent pumping station about four years ago with very good results.

Analysis

Quotes for three pumps from different manufacturers were received as follows:

ABS Pumps	\$13,720.00
Fairbanks Pumps	\$21,710.00
Flygt Products	\$20,730.48

The low bid from ABS Pumps is being recommended for purchase. The ABS pump is the least expensive as well as consistent with other pumps at the treatment plant.

Financial Impact

Funds for the purchase of the pump will come from the capital improvement construction line item of the Wastewater Expenditures Budget and were budgeted for FY19. As a capital improvement expenditure, this expense will be shared equally with the Sun Valley Water and Sewer District.

Attachments:

Purchase Order 20390

Bid – ABS Pump (C.H. Spencer)

Bid – Fairbanks Pump (C.H. Spencer)

Bid – Flygt Pump (Xylem Water Solutions)



City of Ketchum
City Hall

Purchase Order

Number: 20390

Date: 9/3/2019

Vendor: C.H. Spencer, LLC
3600 E Newby St
Nampa, ID 83687

Quote Ref: XFP Pump Replacement

Quantity	Item # / SKU	Description	Item Cost	Total Cost
1		ABS XFP 200G CB1.1 PE130/6 3/60/460 Submersible Pump with 49' Cable and Seal Fail/Temp Relay	13,720.00	13,720.00
		Subtotal		13,720.00
		Freight – Prepay and add		
			Total	

The City of Ketchum is a tax-exempt political subdivision of the State of Idaho.

Please confirm this City of Ketchum Purchase Order with expected delivery to Mick Mummert, Wastewater Dept. Supervisor, at mmummert@ketchumidaho.org or (208) 726-7825.

Please Ship Above Listed Items to:

City of Ketchum WWTP
Attn: Mick Mummert
110 River Ranch Rd
Ketchum, ID 83340

Billing Address:

City of Ketchum
P.O. Box 2315
Ketchum, ID 83340

Order Submitted By:

Neil Bradshaw, Mayor



C.H. Spencer LLC

3600 E Newby St
Nampa, ID 83687
Phone: 208-442-6407
Fax: 801-972-5216

To: City of Ketchum
Attn: Jeff Vert
Date: 5/14/2019
Reference: XFP Pump Replacement

C.H. Spencer LLC is pleased to offer the following proposal for products and services as defined in this scope letter for the above referenced project.

I: EQUIPMENT DESCRIPTION:

Replacement ABS Pump

Qty. (1) ABS XFP 200G CB1.1 PE130/6 3/60/460

- Contrablock Non-clog Impeller
- 17.4 HP 1180 RPM 3/60/460 Submersible Motor
- 49' Submersible cable
- Qty. (1) 110V-230V CA462 Seal Fail/Temp Relay

C.H. Spencer's scope of supply ends at the suction and discharge flanges of the pump and at the terminal boxes of the motor. Installation, wiring, anchor bolts, foundations, templates, miscellaneous piping not integral with the pumping equipment, external lubrication piping systems and instrumentation, valves, gauges, controls, motor starter, finish paint at the job site, unloading and movement of equipment at site, storage, assembly of equipment at site, field testing and or/ seismic analysis, and commissioning, switch gear, and other miscellaneous items required for installation and proper operation of the proposed equipment which are not specifically noted above are not included with this proposal. Intermediate bearing supports for intermediate shafting are to be provided by others. Any bolts, nuts or associated hardware required for motors, pumps or pump cans is not part of C.H. Spencer's Scope of Supply. Any type of lubrication or oil required for the equipment described above is not part of C.H. Spencer's Scope of Supply.

II: APPLICABLE SPECIFICATIONS:

Installation is not included in C.H. Spencer's Scope of Supply.

Any type of Alignment including laser Alignment is not Part of C.H. Spencer's Scope of Supply unless specifically called in our Scope of Supply. Alignment must be performed per manufactures O&M Manual, if these procedures are not followed warranty will be void on equipment listed above. It is not C.H. Spencer's responsibility to certify alignment on equipment unless alignment is performed by C.H. Spencer.

The specifications listed above are the only specifications that shall apply to this proposal either directly or by reference. Any specification that is not specifically included as part of this proposal is excluded from this offering. Furthermore, any item that is not listed above is not part of C.H. Spencer's Scope of Supply, any item required by specification and not listed above is not part of C.H. Spencer's Scope of Supply. Any additional specification or Drawing required is not part of C.H. Spencer's Scope of Supply.

III: SERVICES:

Listed Above

IV: SCHEDULES:

Submittal drawings and procedures for approval will be available within (2-4) weeks after date of CH Spencer's order acknowledgement; provided that C.H. Spencer LLC has received a written, technically complete, commercially acceptable purchase order and all of the required design information from the customer.

Any delay after 15 days on returning the approval submittals from the customer may impact the price and/or equipment delivery schedule.

Please allow an estimated 14-16 weeks for delivery to job site from date of engineering approval.

Unless specifically instructed otherwise, all equipment will be released to production upon receipt of approved submittals. Storage fees may apply, and warranty may be affected if the customer's schedule for receipt of goods exceeds C.H. Spencer's estimated lead time.

V: PRICING:

C.H. Spencer is pleased to offer the following pricing for the above referenced project:

Total

\$13,720.00

Pricing does not include taxes, FOB point of manufacture with freight pre-paid and allowed.
Pricing does not include any State, Sales, Use and/or other taxes as may be applicable to this project.

VI: ESCALATION:

The prices as quoted will be held firm through the quoted delivery period provided **C.H. Spencer LLC** has received a written, technically complete, commercially acceptable purchase order from our customer and all the submittal data has been returned approved to **C.H. Spencer LLC** within the 30 days from the date submitted and the equipment has been released to manufacture.

VII: TERMS AND CONDITIONS:

This proposal is valid for acceptance through (15) days from referenced bid date and is subject to the attached CH Spencer terms and conditions. If there are any differences between the CH Spencer terms and any part of the bid specifications, then the CH Spencer terms shall apply and take precedence.

C.H. Spencer will not be responsible for any form of back charges or liquidated damages or any form for the above referenced project.

C.H. Spencer will be willing to negotiate final terms and conditions with the awarded contractor after the bid date.

Contractor will be liable for fees associated with Submittals if contract is terminated prior to release or delivery of equipment to the job site.

C.H. Spencer's full set of terms and conditions can be found at www.chspencer.com and will apply to this offering in full.

VIII: WARRANTY:

The Manufacturer's standard warranty as per the attached terms and conditions shall apply to this proposal. Any form of push/pull charges associated with project due to warranty is not part of C.H. Spencer's Scope of Supply.

IX: TERMS OF PAYMENT:

C.H. Spencer & Company terms of payment for this proposal is net 30 days from the date of invoice unless stated otherwise above, subject to our Credit Department approval. All equipment will be invoiced on the date of shipment. Partial shipments and partial payments are to be allowed.

Very truly yours,
Matt Clemens
Sales Engineer
C.H. Spencer LLC

Our Standard Terms and Conditions as stated at the end of this quotation apply and are a part of this proposal:

Accepted by (type name)

X

Signature:

Firm Name:

Date:

Date:

for C.H. Spencer LLC

X

Signature:

C.H. SPENCER TERMS & CONDITIONS

1. **General:** These Purchase Terms and Conditions form a part defined or referenced as the Agreement. In case of conflicts and discrepancies between Agreement and any other document, the parties' intent shall be inferred from the Agreement document read as a whole and the most strict and stringent clause or requirement of any part of the Agreement shall control, unless specifically stated otherwise. The Agreement reference will supersede all related documents, including but not limited to, invoices, packing slips, delivery receipts, and correspondence.
2. **Acceptance:** BUYER shall be bound by this Agreement when it commences any performance hereunder. This Agreement expressly limits acceptance to the terms and conditions stated herein, including any and all attachments, exhibits, or other documents referenced. SELLER's conditions shall be deemed accepted in their entirety by commencement of any work hereunder or upon failure to notify SELLER in writing of exceptions within five (5) business days from date of issuance of this Agreement, whichever occurs first.
3. **Termination for Convenience of BUYER.** BUYER retains the right to suspend or terminate this Agreement or any part thereof for its sole convenience. In the event of such termination, SELLER shall immediately stop all work hereunder, and shall immediately cause its suppliers or subcontractors to cease such work. BUYER will be responsible for reasonable termination charge consisting of a percentage of the Agreement price reflecting the percentage of the work properly delivered prior to the notice of termination plus actual direct costs resulting from termination, including cancellation charges directly associated with costs for items that are in production at time of cancellation. SELLER shall not be paid for any work done after receipt of the notice of termination which SELLER could reasonably have avoided, nor for any costs incurred by SELLER's suppliers or subcontractors which SELLER could reasonably have avoided.
4. **Termination for Cause:** BUYER may also terminate this Agreement or any part hereof for cause in the event of any default by the SELLER or if the SELLER fails to comply with any of the terms and conditions of this Agreement. Late deliveries, delivery of goods which are defective or which do not conform to this Agreement, and failure to provide BUYER upon request of reasonable assurance of future performance shall all be causes allowing BUYER to terminate this Agreement for cause. In the event of termination for cause, BUYER shall not be liable to SELLER for any amount. The maximum liability of the Seller shall be the value of the purchase order or item, whichever is lower.
5. **Proprietary Information, Confidentiality, and Advertising:** BUYER shall consider all information furnished by SELLER to be confidential and shall not disclose any such information for any purpose other than performing this Agreement, unless BUYER obtains written permission from SELLER to do so. This restriction shall apply, but not be limited to, articles, drawings, specification, or other documents prepared by SELLER for BUYER in connection with this Agreement. SELLER shall not advertise or publish the fact that BUYER has contracted to purchase goods or services from SELLER, nor shall any information relating to the Agreement be disclosed without BUYER's written permission. Unless otherwise agreed in writing, commercial, financial or technical information disclosed in any manner or at any time by SELLER to BUYER shall be deemed secret or confidential.
6. **Costs Included in Price:** Unless otherwise specified, the price stated on this Agreement includes all charges and expenses of SELLER, including but not limited to packing, boxing, cartage, and any and all applicable taxes of federal, state, local government including, but not limited to, duty, excise tax, sales and use tax, occupational tax, processing tax, and manufacturing tax. SELLER agrees to accept in lieu of any tax that may be included in this Agreement, a tax exemption certificate or other evidence acceptable to the federal, state or local government and to reduce the price stated herein by the amount of such exempt tax.
7. **Liens or Claims:** The SELLER has the right to file a lien on the Project, then to the extent of any payments made, SELLER agrees as part of this Agreement, and for the consideration herein set forth, that SELLER will execute a general release waiving, upon receipt of final payment by SELLER, all claims, except those claims previously made in writing to BUYER and remaining unsettled at the time of final payment.
8. **Affirmative Action:** SELLER warrants that the goods and/or services covered by this Agreement will be produced in compliance with the requirements of applicable labor and employment laws, regulations, and orders.
9. **Remedies:** Each of the rights and remedies reserved by SELLER in this Agreement shall be cumulative and additional to any other or further remedies provided in law or equity or in this Agreement.
10. **Assignments and Subcontracting:** No part of this Agreement may be assigned or subcontracted without the prior written approval of SELLER.
11. **Setoff:** No claims for money due or to become due from BUYER shall be subject to deduction or set off by the BUYER by reason of any claim arising out of this or any other transaction without the prior approval of the SELLER.
12. **Shipment:** Delivery charges are the responsibility of the BUYER. All freight will be shipped FOB Shipping point unless alternative agreements are assigned.
13. **Delivery:** Time is an important consideration of this Agreement. Deliveries of goods and/or rendering of services are to be made both in quantities and at terms specified on the face hereof, or upon release schedules furnished against this Agreement.
14. **Title, Risk of Loss and Storage:** Unless otherwise stated in this Agreement, title to the goods shall pass from SELLER to BUYER and/or Owner upon shipment and initial receipt of the goods by carrier. BUYER shall be responsible for loss or damage to work in transit and all goods to be furnished hereunder BUYER will be responsible for required storage of all goods if specified. .
15. **Applicable Law:** The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of UTAH.
16. **Compliance with Laws:** In accepting this Agreement SELLER warrants that it has and will continue during the performance of this Agreement to comply with the applicable provisions of all federal, state and local laws and regulations including, but not limited to:
 - Fair Labor Standards Act of 1938, as amended.
 - The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended and the implementing rules and regulations (41 CFR) which are incorporated herein by reference, unless this Agreement is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O.

- The Affirmative Action for Handicapped Workers Clause in (41 CFR, Part 60, Sub Section 741.4) and the implementing rules and regulations of the Department of Labor associated therewith which are incorporated herein by reference, unless this Agreement is under US\$2,500.
 - The Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era Clause (41 CFR, Part 60, Sub section 250.4) and the implementing rules and regulations of the Department of Labor associated therewith which are incorporated herein by reference, unless this Agreement is under US\$10,000.
17. **Notice:** All notices required to be given hereunder shall be deemed to be duly given by person delivering such notice or by mailing it, via reregistered or certified mail as follows. Notice to SELLER shall be at the address recorded on the face of this Agreement. Notice to BUYER shall be to the address appearing on the face of the Purchase Document.
 18. **Savings:** If any provision of this Agreement is determined to be unenforceable or in contravention of any applicable law, such provision shall be deemed modified to the minimum extent required to bring such provision into compliance with said law.
 19. **Entire Agreement:** This Agreement, including as applicable SELLER's proposal to the BUYER, constitutes the entire agreement between SELLER and BUYER and supersedes all prior or contemporaneous communications, representations, or agreements, oral or written, with respect to its subject matter. Any additional or different terms in SELLER's terms or proposal are hereby expressly rejected.
 20. **INSURANCE AND CLAIMS. :** If Supplier is required to maintain insurance, such insurance shall not exceed the following requirements: (i) general liability insurance in an amount up to \$5,000,000 per occurrence; (ii) motor vehicle insurance with a combined single limit of \$2,000,000; (iii) worker's compensation as required by applicable law and (iv) employer's liability insurance in an amount up to \$1,000,000. In addition, if Supplier is required to waive subrogation, Purchaser shall waive all subrogation claims
 21. **DISPUTE RESOLUTION.** Promptly after identification of a "claim" (a demand for monetary compensation or damages or time extension, arising from or relating to the Project), BUYER and SELLERS designated representatives shall meet and attempt to reach agreement upon a reasonable, compromise resolution of the claim. If any claim not involving the Owner remains unresolved after this attempt, BUYER & SELLER agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator within one hundred twenty (120) calendar days after the meeting of the parties' representatives, unless the parties both agree upon a longer period of time. The parties mutually agree that the resolution of the Arbitration will be fully binding. The parties shall share equally the mediator's fee for the mediation.
 22. **INDEMNIFICATION OF SUPPLIER:** To the extent that the Contract contains any indemnification of Purchaser by Supplier, Supplier's indemnification obligations are conditioned upon, and limited to the extent of, Supplier's fault and shall be limited to claims by third-parties. Supplier's indemnity obligations specifically exclude damages or costs of any and all kinds related in any way to any matter that is covered by Supplier's warranty (which warranty shall be Buyer's sole remedy for all such matters). Any indemnification of Buyer by Supplier for infringement of intellectual property specifically excludes (i) any product that is furnished in accordance with Buyer's drawings, designs, specifications and/or directions, (ii) infringement by any subcontractor designated by Buyer, (iii) any claim of patent infringement relating to the incorporation of the product(s) into any other product or process and (iv) Buyer's modification of the product(s).
 23. **CONSEQUENTIAL DAMAGES:** Neither party shall be liable to the other party for any indirect, consequential, incidental, special, punitive or exemplary damages or loss, of any kind, including, without limitation, any loss of business, lost profits or interruption of service (even if such party has been advised of the possibility of such damages or such damages could have been reasonably foreseen by such party). The total liability of the parties under this Agreement after Purchaser's payment of the purchase price for the product(s) shall be limited to the amount of such purchase price as the exclusive remedy of the non-breaching party.
 24. **WARRANTY:** Supplier warrants all Products as to material and workmanship and that the Products shall conform to the specifications, drawings, and designs provided by Purchaser, if any. Supplier's sole obligation under this warranty shall be to repair or replace any non-conforming goods. Upon the reasonable request of Supplier, Purchaser will return any defective part(s) or Product(s) to Supplier. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OR CONDITIONS, WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES, OR CONDITIONS, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED. In the event of any breach of warranty by Supplier, Purchaser shall: (i) notify Supplier of the nature of the breach; (ii) provide Supplier with accurate and complete information concerning the breach; (iii) provide access to the Products by Supplier and Supplier's agents and (iv) allow Supplier a reasonable opportunity to effectuate repairs and/or modifications to the Products or to otherwise cure the breach. In the event that Purchaser does not fulfill the conditions set forth in the preceding sentence, Supplier shall not be liable for any damages, losses or expenses incurred by Purchaser or any other person in connection with any breach of Supplier's warranty. The original warranty period shall not be extended by virtue of any intervening warranty claim.



C.H. Spencer LLC

3600 E Newby St
Nampa, ID 83687
Phone: 208-442-6407
Fax: 801-972-5216

To: City of Ketchum
Attn: Jeff Vert
Date: 8/22/2019
Reference: Fairbanks Pump Replacement

C.H. Spencer LLC is pleased to offer the following proposal for products and services as defined in this scope letter for the above referenced project.

I: EQUIPMENT DESCRIPTION:

Qty (1) Fairbanks Model D5434S MV, 8"

- Cast iron construction, SS shaft
- 15HP 900RPM TEFC Explosion Proof motor, TEFC 460/3/60
- 50ft power and control cable
- Moisture Detector Relay (shipped loose, for installation in Customer's control panel)

Qty (1) Discharge Elbow

- Cast iron, 8" x 10"
- Includes top guide rail bracket

C.H. Spencer's scope of supply ends at the suction and discharge flanges of the pump and at the terminal boxes of the motor. Installation, wiring, anchor bolts, foundations, templates, miscellaneous piping not integral with the pumping equipment, external lubrication piping systems and instrumentation, valves, gauges, controls, motor starter, finish paint at the job site, unloading and movement of equipment at site, storage, assembly of equipment at site, field testing and or/ seismic analysis, and commissioning, switch gear, and other miscellaneous items required for installation and proper operation of the proposed equipment which are not specifically noted above are not included with this proposal. Intermediate bearing supports for intermediate shafting are to be provided by others. Any bolts, nuts or associated hardware required for motors, pumps or pump cans is not part of C.H. Spencer's Scope of Supply. Any type of lubrication or oil required for the equipment described above is not part of C.H. Spencer's Scope of Supply.

II: APPLICABLE SPECIFICATIONS:

Field Services, Start Up and Installation is not included in C.H. Spencer's Scope of Supply

Any type of Alignment including laser Alignment is not Part of C.H. Spencer's Scope of Supply unless specifically called in our Scope of Supply. Alignment must be performed per manufactures O&M Manual, if these procedures are not followed warranty will be void on equipment listed above. It is not C.H. Spencer's responsibility to certify alignment on equipment unless alignment is performed by C.H. Spencer.

The specifications listed above are the only specifications that shall apply to this proposal either directly or by reference. Any specification that is not specifically included as part of this proposal is excluded from this offering. Furthermore, any item that is not listed above is not part of C.H. Spencer's Scope of Supply, any item required by specification and not listed above is not part of C.H. Spencer's Scope of Supply. Any additional specification or Drawing required is not part of C.H. Spencer's Scope of Supply.

III: SERVICES:

Listed Above

IV: SCHEDULES:

Submittal drawings and procedures for approval will be available within (2-4) weeks after date of CH Spencer's order acknowledgement; provided that C.H. Spencer LLC has received a written, technically complete, commercially acceptable purchase order and all of the required design information from the customer.

Any delay after 15 days on returning the approval submittals from the customer may impact the price and/or equipment delivery schedule.

Please allow an estimated 14-16 weeks for delivery to job site from date of engineering approval.

Unless specifically instructed otherwise, all equipment will be released to production upon receipt of approved submittals. Storage fees may apply, and warranty may be affected if the customer's schedule for receipt of goods exceeds C.H. Spencer's estimated lead time.

V: PRICING:

C.H. Spencer is pleased to offer the following pricing for the above referenced project:

Total

**Fairbanks Model D5434S MV Pump
Discharge Elbow for Fairbanks Model D5434S MV**

**\$21,710.00
\$2,200.00**

Pricing does not include Freight to site, taxes, FOB point of manufacture with freight pre-paid and allowed.
Pricing does not include any State, Sales, Use and/or other taxes as may be applicable to this project.

VI: ESCALATION:

The prices as quoted will be held firm through the quoted delivery period provided **C.H. Spencer LLC** has received a written, technically complete, commercially acceptable purchase order from our customer and all the submittal data has been returned approved to **C.H. Spencer LLC** within the 30 days from the date submitted and the equipment has been released to manufacture.

VII: TERMS AND CONDITIONS:

This proposal is valid for acceptance through (15) days from referenced bid date and is subject to the attached CH Spencer terms and conditions. If there are any differences between the CH Spencer terms and any part of the bid specifications, then the CH Spencer terms shall apply and take precedence.

C.H. Spencer will not be responsible for any form of back charges or liquidated damages or any form for the above referenced project.

C.H. Spencer will be willing to negotiate final terms and conditions with the awarded contractor after the bid date.

Contractor will be liable for fees associated with Submittals if contract is terminated prior to release or delivery of equipment to the job site.

C.H. Spencer's full set of terms and conditions can be found at www.chspencer.com and will apply to this offering in full.

VIII: WARRANTY:

The Manufacturer's standard warranty as per the attached terms and conditions shall apply to this proposal. Any form of push/pull charges associated with project due to warranty is not part of C.H. Spencer's Scope of Supply.

IX: TERMS OF PAYMENT:

Pump Approved Submittals (25%)

Pump Notice to Release for Fabrication (25%)

Pump Notice of Readiness to Ship (25%)

Pump Delivery net 30 days (25%)

C.H. Spencer & Company terms of payment for this proposal is net 30 days from the date of invoice unless stated otherwise above, subject to our Credit Department approval. All equipment will be invoiced on the date of shipment. Partial shipments and partial payments are to be allowed.

Very truly yours,
John Remsik
Sales Engineer
C.H. Spencer LLC

Our Standard Terms and Conditions as stated at the end of this quotation apply and are a part of this proposal:

Accepted by (type name) _____

X
Signature: _____

Firm Name:

Date:

Date:

for C.H. Spencer LLC

X
Signature: _____

C.H. SPENCER TERMS & CONDITIONS

1. **General:** These Purchase Terms and Conditions form a part defined or referenced as the Agreement. In case of conflicts and discrepancies between Agreement and any other document, the parties' intent shall be inferred from the Agreement document read as a whole and the most strict and stringent clause or requirement of any part of the Agreement shall control, unless specifically stated otherwise. The Agreement reference will supersede all related documents, including but not limited to, invoices, packing slips, delivery receipts, and correspondence.
2. **Acceptance:** BUYER shall be bound by this Agreement when it commences any performance hereunder. This Agreement expressly limits acceptance to the terms and conditions stated herein, including any and all attachments, exhibits, or other documents referenced. SELLER's conditions shall be deemed accepted in their entirety by commencement of any work hereunder or upon failure to notify SELLER in writing of exceptions within five (5) business days from date of issuance of this Agreement, whichever occurs first.
3. **Termination for Convenience of BUYER.** BUYER retains the right to suspend or terminate this Agreement or any part thereof for its sole convenience. In the event of such termination, SELLER shall immediately stop all work hereunder, and shall immediately cause its suppliers or subcontractors to cease such work. BUYER will be responsible for reasonable termination charge consisting of a percentage of the Agreement price reflecting the percentage of the work properly delivered prior to the notice of termination plus actual direct costs resulting from termination, including cancellation charges directly associated with costs for items that are in production at time of cancellation. SELLER shall not be paid for any work done after receipt of the notice of termination which SELLER could reasonably have avoided, nor for any costs incurred by SELLER's suppliers or subcontractors which SELLER could reasonably have avoided.
4. **Termination for Cause:** BUYER may also terminate this Agreement or any part hereof for cause in the event of any default by the SELLER or if the SELLER fails to comply with any of the terms and conditions of this Agreement. Late deliveries, delivery of goods which are defective or which do not conform to this Agreement, and failure to provide BUYER upon request of reasonable assurance of future performance shall all be causes allowing BUYER to terminate this Agreement for cause. In the event of termination for cause, BUYER shall not be liable to SELLER for any amount. The maximum liability of the Seller shall be the value of the purchase order or item, whichever is lower.
5. **Proprietary Information, Confidentiality, and Advertising:** BUYER shall consider all information furnished by SELLER to be confidential and shall not disclose any such information for any purpose other than performing this Agreement, unless BUYER obtains written permission from SELLER to do so. This restriction shall apply, but not be limited to, articles, drawings, specification, or other documents prepared by SELLER for BUYER in connection with this Agreement. SELLER shall not advertise or publish the fact that BUYER has contracted to purchase goods or services from SELLER, nor shall any information relating to the Agreement be disclosed without BUYER's written permission. Unless otherwise agreed in writing, commercial, financial or technical information disclosed in any manner or at any time by SELLER to BUYER shall be deemed secret or confidential.
6. **Costs Included in Price:** Unless otherwise specified, the price stated on this Agreement includes all charges and expenses of SELLER, including but not limited to packing, boxing, cartage, and any and all applicable taxes of federal, state, local government including, but not limited to, duty, excise tax, sales and use tax, occupational tax, processing tax, and manufacturing tax. SELLER agrees to accept in lieu of any tax that may be included in this Agreement, a tax exemption certificate or other evidence acceptable to the federal, state or local government and to reduce the price stated herein by the amount of such exempt tax.
7. **Liens or Claims:** The SELLER has the right to file a lien on the Project, then to the extent of any payments made, SELLER agrees as part of this Agreement, and for the consideration herein set forth, that SELLER will execute a general release waiving, upon receipt of final payment by SELLER, all claims, except those claims previously made in writing to BUYER and remaining unsettled at the time of final payment.
8. **Affirmative Action:** SELLER warrants that the goods and/or services covered by this Agreement will be produced in compliance with the requirements of applicable labor and employment laws, regulations, and orders.
9. **Remedies:** Each of the rights and remedies reserved by SELLER in this Agreement shall be cumulative and additional to any other or further remedies provided in law or equity or in this Agreement.
10. **Assignments and Subcontracting:** No part of this Agreement may be assigned or subcontracted without the prior written approval of SELLER.
11. **Setoff:** No claims for money due or to become due from BUYER shall be subject to deduction or set off by the BUYER by reason of any claim arising out of this or any other transaction without the prior approval of the SELLER.
12. **Shipment:** Delivery charges are the responsibility of the BUYER. All freight will be shipped FOB Shipping point unless alternative agreements are assigned.
13. **Delivery:** Time is an important consideration of this Agreement. Deliveries of goods and/or rendering of services are to be made both in quantities and at terms specified on the face hereof, or upon release schedules furnished against this Agreement.
14. **Title, Risk of Loss and Storage:** Unless otherwise stated in this Agreement, title to the goods shall pass from SELLER to BUYER and/or Owner upon shipment and initial receipt of the goods by carrier. BUYER shall be responsible for loss or damage to work in transit and all goods to be furnished hereunder BUYER will be responsible for required storage of all goods if specified. .
15. **Applicable Law:** The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of UTAH.
16. **Compliance with Laws:** In accepting this Agreement SELLER warrants that it has and will continue during the performance of this Agreement to comply with the applicable provisions of all federal, state and local laws and regulations including, but not limited to:
 - Fair Labor Standards Act of 1938, as amended.
 - The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended and the implementing rules and regulations (41 CFR) which are incorporated herein by reference, unless this Agreement is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O.

- The Affirmative Action for Handicapped Workers Clause in (41 CFR, Part 60, Sub Section 741.4) and the implementing rules and regulations of the Department of Labor associated therewith which are incorporated herein by reference, unless this Agreement is under US\$2,500.
 - The Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era Clause (41 CFR, Part 60, Sub section 250.4) and the implementing rules and regulations of the Department of Labor associated therewith which are incorporated herein by reference, unless this Agreement is under US\$10,000.
17. **Notice:** All notices required to be given hereunder shall be deemed to be duly given by person delivering such notice or by mailing it, via reregistered or certified mail as follows. Notice to SELLER shall be at the address recorded on the face of this Agreement. Notice to BUYER shall be to the address appearing on the face of the Purchase Document.
 18. **Savings:** If any provision of this Agreement is determined to be unenforceable or in contravention of any applicable law, such provision shall be deemed modified to the minimum extent required to bring such provision into compliance with said law.
 19. **Entire Agreement:** This Agreement, including as applicable SELLER's proposal to the BUYER, constitutes the entire agreement between SELLER and BUYER and supersedes all prior or contemporaneous communications, representations, or agreements, oral or written, with respect to its subject matter. Any additional or different terms in SELLER's terms or proposal are hereby expressly rejected.
 20. **INSURANCE AND CLAIMS. :** If Supplier is required to maintain insurance, such insurance shall not exceed the following requirements: (i) general liability insurance in an amount up to \$5,000,000 per occurrence; (ii) motor vehicle insurance with a combined single limit of \$2,000,000; (iii) worker's compensation as required by applicable law and (iv) employer's liability insurance in an amount up to \$1,000,000. In addition, if Supplier is required to waive subrogation, Purchaser shall waive all subrogation claims
 21. **DISPUTE RESOLUTION.** Promptly after identification of a "claim" (a demand for monetary compensation or damages or time extension, arising from or relating to the Project), BUYER and SELLERS designated representatives shall meet and attempt to reach agreement upon a reasonable, compromise resolution of the claim. If any claim not involving the Owner remains unresolved after this attempt, BUYER & SELLER agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator within one hundred twenty (120) calendar days after the meeting of the parties' representatives, unless the parties both agree upon a longer period of time. The parties mutually agree that the resolution of the Arbitration will be fully binding. The parties shall share equally the mediator's fee for the mediation.
 22. **INDEMNIFICATION OF SUPPLIER:** To the extent that the Contract contains any indemnification of Purchaser by Supplier, Supplier's indemnification obligations are conditioned upon, and limited to the extent of, Supplier's fault and shall be limited to claims by third-parties. Supplier's indemnity obligations specifically exclude damages or costs of any and all kinds related in any way to any matter that is covered by Supplier's warranty (which warranty shall be Buyer's sole remedy for all such matters). Any indemnification of Buyer by Supplier for infringement of intellectual property specifically excludes (i) any product that is furnished in accordance with Buyer's drawings, designs, specifications and/or directions, (ii) infringement by any subcontractor designated by Buyer, (iii) any claim of patent infringement relating to the incorporation of the product(s) into any other product or process and (iv) Buyer's modification of the product(s).
 23. **CONSEQUENTIAL DAMAGES:** Neither party shall be liable to the other party for any indirect, consequential, incidental, special, punitive or exemplary damages or loss, of any kind, including, without limitation, any loss of business, lost profits or interruption of service (even if such party has been advised of the possibility of such damages or such damages could have been reasonably foreseen by such party). The total liability of the parties under this Agreement after Purchaser's payment of the purchase price for the product(s) shall be limited to the amount of such purchase price as the exclusive remedy of the non-breaching party.
 24. **WARRANTY:** Supplier warrants all Products as to material and workmanship and that the Products shall conform to the specifications, drawings, and designs provided by Purchaser, if any. Supplier's sole obligation under this warranty shall be to repair or replace any non-conforming goods. Upon the reasonable request of Supplier, Purchaser will return any defective part(s) or Product(s) to Supplier. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, OR CONDITIONS, WRITTEN OR ORAL, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES, OR CONDITIONS, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED. In the event of any breach of warranty by Supplier, Purchaser shall: (i) notify Supplier of the nature of the breach; (ii) provide Supplier with accurate and complete information concerning the breach; (iii) provide access to the Products by Supplier and Supplier's agents and (iv) allow Supplier a reasonable opportunity to effectuate repairs and/or modifications to the Products or to otherwise cure the breach. In the event that Purchaser does not fulfill the conditions set forth in the preceding sentence, Supplier shall not be liable for any damages, losses or expenses incurred by Purchaser or any other person in connection with any breach of Supplier's warranty. The original warranty period shall not be extended by virtue of any intervening warranty claim.



**Xylem Water Solutions USA, Inc.
Flygt Products**

July 23, 2019

2707 S Saturn Way
Boise, Idaho 83709
Tel 208-519-9341
Fax

CITY OF KETCHUM
UTILITIES DEPT
PO BOX 2315
KETCHUM ID 83340

Quote # 2019-IDA-0093
Re:(37) Individual Quotes Ketchum - Pump Replacement

Xylem Water Solutions USA, Inc. is pleased to offer our confidential quotation for the following Flygt equipment and services.

Pumps

Qty	Description	Extended Price
1	Flygt Model NP-3153.095 8" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 12 HP 1750 RPM motor, 415 impeller, 1 x 50 Ft. length of SUBCAB 4G10+S(2x0,5) submersible cable, FLS leakage detector, volute is prepared for Flush Valve	\$ 18,828.48
1	START UP CHARGE FLYGT 1-TP MODELS: 3000,7000,8000	\$ 1,299.00
Pumps Price		\$ 20,127.48

Controls

Qty	Description	Extended Price
1	MINI-CASII/FUS 120/24VAC,24VDC	\$ 520.00
1	SOCKET,11-PIN BACK MOUNTING	\$ 83.00
Controls Price		\$ 603.00

Total Project Price \$ 20,730.48

Freight Charge \$ 815.00

Total Project Price \$ 21,545.48

Terms & Conditions

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xylem-inc.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the parties.

Purchase Orders: Please make purchase orders out to: Xylem Water Solutions USA, Inc.

Freight Terms: 3 DAP - Delivered At Place 08 - Jobsite (per IncoTerms 2010)

See Freight Payment (Delivery Terms) below.



Taxes: State, local and other applicable taxes are not included in this quotation.
Back Charges: Buyer shall not make purchases nor shall Buyer incur any labor that would result in a back charge to Seller without prior written consent of an authorized employee of Seller.
Shortages: Xylem will not be responsible for apparent shipment shortages or damages incurred in shipment that are not reported within two weeks from delivery to the jobsite. Damages should be noted on the receiving slip and the truck driver advised of the damages. Please contact our office as soon as possible to report damages or shortages so that replacement items can be shipped and the appropriate claims made.
Terms of Delivery: PP/Add Order Position
Validity: This Quote is valid for sixty (60) days.
Terms of Payment: 100% N30 after invoice date.
Xylem's payment shall not be dependent upon Purchaser being paid by any third party unless Owner denies payment due to reasons solely attributable to items related to the equipment being provided by FLYGT.

Schedule: Please consult your local Flygt Branch Office to get fabrication and delivery lead times.

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

Sincerely,



Bill Weymouth
Engineered Sales

Cell: 208.519.9341
bill.weymouth@xyleminc.com
Fax: 406-495-1336