

Date: June 27, 2024
To: Joe Trueblood, Utility Superintendent
From: Bill Swearingen, Operations Supervisor
Subject: Sludge Pump #1

I would like to recommend replacing sludge pump #1. The pump was originally installed in the early 1990s and has recently failed. Sludge pump #2 was rehabbed/rebuilt in 2018 and is in good standing. Unfortunately, parts have become obsolete, thus making repairs challenging with no lead time insight.

The sludge pump system pumps settling basin solids to a 3rd party contractor for belt filter press operations for dewatering and landfill disposal, but also pumps filter backwash solids to the sanitary for the WWTP to process.

The attached proposal includes programming, startup, and installation services.

Sludge Pump #1 Replacement	<u>Total</u> \$32,430.00
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L & S Electric, Inc.
Sturtevant
10200 Durand Ave
Sturtevant, WI 53177-0398

QUOTATION

TO: SHEBOYGAN WATER UTILITY
72 PARK AVENUE
SHEBOYGAN, WI 53081

QUOTE NUMBER: 062624-ECT
REVISION: 0
DATE: 6/26/2024
LEAD TIME: See Below
PRICES: Good for 30 days
TERMS: Net 30
FREIGHT: FOB

ATTN: Bill Swearingen
CUST NO: 966401
SUBJECT: Flygt 20hp 062624-ECT

ITEM	DESCRIPTION	QTY	PRICE EACH
1	REPLACEMENT: Flygt Model NP-3153.185 4" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 20 HP 1750 RPM motor, 462 impeller, 1 x 50 Ft. length of SUBCAB 4G16+S(2x0,5) submersible cable, FLS leakage detector, volute is prepared for Flush Valve/ Lead Time: 11-13Weeks ARO / Freight: Prepaid and Add	1.00000	\$30,970.00
2	On-Site: Travel to and from site. Reconnect pump cable(s) to power / sensing relay source.	1.00000	\$1,460.00

NOTE:

Orders placed are subject to cancellations charges.

There will be a cancellation fee incurred for any print approval order cancelled after motor data is received by customer. Custom, Modified and built to order items are non-cancellable and non-returnable except for warranty reasons.

A Supply Chain Fee will be added to each invoice in a tiered and structured format as follows.

\$50-\$250 net sales - \$5.00 fee

\$251 - \$10,000 net sales - \$15.00 fee

\$10,001 and above net sales - \$20.00 fee

Credit card payments are subject to 3.5% processing fees. Credit card will be charged at the time of shipment and payment terms will be forfeited.

Thank you for the opportunity to quote your requirements. If you have any questions or concerns, please feel free to contact us. L & S Electric, Inc's standard terms and conditions apply.

Sincerely,

Eli Torres

Sturtevant Operations Manager

p:715.241.3734 | m:262.347.6266

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Email: ETorres@lselectric.com



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Standard Terms and Conditions of L & S Electric, Inc. – 2022

1. Agreement of Sale. Unless a separate contract is executed by both parties, which shall govern this order, the following shall apply:
 - a. In consideration hereof, “Buyer” seeks to purchase from L & S Electric, Inc. (the “Seller”) the product, part, equipment, accessories, or material (“Goods”) and/or scope of work (“Services”) described in the applicable quotation of Seller (“Quote”) and Seller seeks to provide such to Buyer.
 - b. Any of the terms and provisions of Buyer's order (“Purchase Order”) which are additional or different with the terms and provisions hereof, shall not be binding on the Seller and shall not be considered applicable to the sale or shipment of Goods and/or performance of Services hereunder. Buyer shall be bound by these Terms and Conditions (“Terms”) upon: (i) issuing a purchase order; (ii) Seller begins to order materials or begins Services; (iii) Seller ships Goods to Buyer, and/or (iv) Buyer accepts delivery of Goods and/or allows Services, whichever occurs first.
 - c. This writing is intended by the Seller and Buyer as a final and exclusive expression of this agreement and no course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in these Terms. No waiver or modification of any of the Terms shall be valid unless it is made in writing and signed by both parties. The failure of the Seller to enforce any right possessed under the Terms shall not constitute a waiver thereof or establish a custom.
 - d. In the event of conflict between contract documents and for scope of work clarity, the order or precedent shall be: (i) any duly executed Change Orders, (ii) the Quote, (iii) these Terms and Conditions, (iv) the Purchase Order (excluding all terms and conditions thereof), and (v) Buyer's drawings, designs and specifications.
2. Prices and Term of Payment. Except as may be set forth in the Quote or other mutually agreed contract document, standard terms of payment are cash in full within thirty (30) days of invoice date. All orders are subject to the approval of the Seller's Credit Department and the Seller may require full or partial payment in advance, prorated or milestone payments shall become due as shipments or other deliverables are made or as set in the Quote. If Buyer fails to comply with terms of payment, or otherwise materially breaches, Seller reserves the right to cancel the unfilled portion of any contractor order, but Buyer shall remain liable for all unpaid accounts and for any other damages due Seller as a result of Buyer's breach of these Terms. To the extent allowed under law, Seller may charge the maximum lawful interest rate on past due amounts. Any expenses associated with collections on past due invoices shall be paid by Buyer. Buyer is responsible for all sales, use, occupation, excise or similar tax which Seller invoices as a separate line item, unless a valid tax exemption certificate, acceptable to the appropriate taxing authorities, is provided at time of order.
 - a. Goods: Prices listed in the Quote are estimates. Seller reserves the right to modify prices based on supplier cost changes. Prices are not firm until confirmed by the suppliers at time of shipment.
 - b. Services: Prices shall be based on the applicable time and material (“T&M”) rate sheet or lump sum total figure in the Quote.
3. Delivery of Goods and Freight. Delivery shall be made via Seller's truck when at all possible, with the risk of loss on Seller until time of delivery. In the case that the Buyer is either out of Seller's delivery territory or Buyer requires the material prior to Seller's delivery date, material will be shipped via the best common carrier, f.o.b. manufacturer's facility, where the risk of loss, delay, and damage in transit is on Buyer. Seller will take commercially reasonable efforts to comply with delivery times. However, Seller may be reliant on suppliers for deliverables which may limit Seller's ability to meet requested specific delivery times. Accordingly, Seller disclaims “time is of the essence”, or other definitive delivery date/time commitments and will make deliveries as and when Seller is commercially able. Seller will communicate anticipated delivery timing as it becomes available. Any penalty clause or a liquidated damage provision for failure to meet shipment are not acceptable unless specifically approved in writing by an officer of the Seller and included in the Quote.
4. Changes. Seller shall have the right, with the prior approval of Buyer, to make changes in the Goods and to substitute equivalent Goods where such changes or substitutions are deemed necessary by Seller to prevent delays in manufacture or delivery or to improve the performance, producibility, stability, control, utility, maintenance or appearance of the Goods provided that such changes or substitutions shall not adversely affect the price, time of delivery, or performance of the equipment nor significantly affect its design, weight or balance. The cost of such changes shall be borne by Seller. Either party shall have the right to propose changes in the Goods or the Services to the other party prior to delivery provided that no such change shall be binding on either party until incorporated into a Change Order to this effect, executed by an authorized representative.
5. Held Orders. For any order held, suspended, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option:
 - a. For Goods: (i) require full or partial payment, based on a prorated portion of the contract price plus any additional expenses and costs resulting from such a delay, (ii) pass through increases in prices of Goods when suspension or hold is lifted, and/or (ii) store the Goods at the sole cost and risk of loss of the Buyer. Payment for such price, expenses and costs, in any such event, shall be due by Buyer within thirty (30) days from date of Seller's invoice. Any order so held delayed or rescheduled beyond six (6) months will be treated as a Buyer termination. In the event of nonpayment or abandoned Goods, Seller may dispose of any stored Goods for which payment has not been received without any liability to Buyer. Buyer shall still owe for such storage fees and the contract price.



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- b. For Services: (i) charge for full or partial payment, based on a prorated portion of the contract price plus any additional expenses and costs resulting from the delay, including but not limited to demobilization, remobilization, hotel accommodations, travel expenses, subcontract labor cost increases, equipment rental charges, and/or (ii) extend the project schedule for additional time to perform.
6. Titles. The title to and right of possession of the Goods (or any part or portion thereof) furnished by the Seller shall remain in the Seller and the Goods shall remain personal property until paid for in full, and the Buyer shall do all acts necessary to perfect and maintain such right and title in the Seller.
7. Warranty. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, VERBAL OR IMPLIED (WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE ARE HEREBY WAIVED).
- a. Goods. Seller shall assign, to the extent able, any warranty of the Goods. For that Warranty Period, the Goods shall: (i) strictly conform to the description and specifications in the Quote; (ii) are free from defects in workmanship, materials and design, to the extent designed by Seller; and (iii) be new, unless mutually agreed otherwise. Continued use or possession of the Goods after the expiration of the Warranty Period shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of the Buyer, who agrees thereafter to make no further claim on the Seller.
- Non-excitation Goods: Unless the Quote states differently, the standard Warranty Period shall be one (1) year from the shipment of the Goods.
 - Excitation Goods: The Warranty Period for excitation products shall be effective for a period of two (2) years. The applicable Warranty Period shall begin after signing of the Certificate of Commercial Operation ("COCO") or 90 days after equipment delivery, whichever is first.
 - Remedies: If a defect occurs during the Warranty Period, Buyer shall provide prompt written notice to Seller and as the sole and exclusive remedy, Seller shall repair or replace the Goods, f.o.b Seller's factory, unless such defect was caused by an act of Buyer, including but not limited to: misuse; improper storage, maintenance, installation; unauthorized modification; or incorporation into other equipment not provided by Seller. All labor-related costs including, but not limited to: of disassembly, in-and-out charges, and transportation shall be borne by Buyer. The warranty provides for the supply of replacement hardware due to failure of components during intended operation. Labor required to replace hardware due to warranty claims shall be the responsibility of the Buyer. Costs associated with materials being damaged due to improper field installation, where installations were not performed by Seller, shall not be the responsibility of Seller.
 - Return of Goods. No Goods shall be returned to the Seller without written authorization and shipping instructions first having been obtained from the Seller under a warranty claim or due to non-conforming goods. In event of non-conforming Goods, Buyer must provide written notice to Seller within seven (7) days of delivery, and to the extent applicable, Seller shall pass through the remedies of the original equipment manufacturer.
- b. Services. Unless the Quote states differently, if Services are provided by Seller, Buyer shall, at the time of the completed Services review the work. If Buyer feels that the Services do not conform to the specifications and description in the Quote, Buyer must provide written notice to Seller to allow Seller to cure by repairing, reperforming, correcting, or replacing work that fails to conform to these warranties, including without limitation the removal of any non-conforming Services. Any Services not rejected within three (3) business days after completion shall be deemed accepted.
8. Force Majeure. The Seller will not be considered to be in default or in breach of its obligations for any delay or failure in performance under these Terms resulting from circumstances reasonably beyond the control of Seller, including but not limited to: any act of God, weather delays or nature, act of civil or military authority, embargo, public enemy, or other governmental act, regulation or request, fire, flood, epidemic, pandemic, casualties or accident, strike, slowdown or other labor difficulty, industry wide supply chain delays, delays in transportation and shortage of cars, fuel, power, labor or materials, war, riot or any other delay beyond Seller's control that affects its ability to perform hereunder. In the event of such delay, the date of delivery and/or performance will be extended for a period equal to the time lost because of the delay. No term or condition of any Purchase Order will modify or nullify this provision. Seller shall provide written notice to Buyer within a reasonable time of the event giving rise to the claim. Seller shall exercise commercially reasonable efforts to mitigate and communicate with Buyer.
9. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THESE TERMS, WHETHER DUE TO BREACH OF CONTRACT, TORT, NEGLIGENCE, WARRANTY, STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL,



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INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE WHETHER OR NOT SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF SUCH PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOSS OF USE OF EQUIPMENT OR FACILITIES, COST OF PURCHASED OR REPLACEMENT POWER OR CLAIMS OF CUSTOMERS DUE TO LOSS OF SERVICE, OR LOSS OF ANTICIPATED BUSINESS SUFFERED OR INCURRED BY THE OTHER PARTY.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR ELSEWHERE, WHERE SELLER'S LIABILITY HAS NOT OTHERWISE BEEN LIMITED AND TO THE EXTENT ALLOWED UNDER THE LAW, SELLER'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY, OR ANY INDIVIDUAL OR ENTITY CLAIMING THROUGH SUCH PARTY, FOR ANY CLAIM OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, ESTOPPEL, COMMON LAW, TORT, CONTRACT, OR STRICT LIABILITY, IN EQUITY, OR ANY OTHER THEORY, ARISING OUT OF, RESULTING FROM OR RELATING TO THESE TERMS, INCLUDING ANY MAINTENANCE ORDERS, SHALL NOT EXCEED THE SUM OF THE FEES ACTUALLY PAID BY THE BUYER TO SELLER UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO THE CLAIM.
11. Mutual Indemnification. Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party, its officers, agents, subcontractors, ("Indemnified Parties") from any and all third-party claims, losses, expenses, costs, or damage of any kind allowed under these Terms, including reasonable outside attorneys' fees, ("Claims"), which are caused by the sole and exclusive fault of the Indemnifying Party or by another for which it is responsible. Buyer shall indemnify Seller as to any claims, losses, expenses, costs, or damage of any kind allowed under these Terms related to or resulting from Buyer's drawings, specifications, designs, uses of Goods provided hereunder, and any patent or intellectual property infringement arising therefrom.
12. Termination. Either Party may terminate these Terms or the Purchase Order, in whole or in part, for cause as of the date specified in a termination notice if the other Party: (a) files for bankruptcy; (b) breaches any other material obligation under these Terms and fails to take action to cure any such breach within ten (10) calendar days after receipt of written notification of any such breach. Either Party may terminate these Terms or the Purchase Order for convenience, in whole or in part, at any time by giving the other party at least thirty (30) days prior written notice of the termination date. In event of termination, Buyer shall make payment to the Seller for all work performed and in progress prior to the date of termination as a prorated portion of the contract price, plus reasonable wrap-up costs, including cancellation fees and restocking charges.
13. Confidential Information. "Confidential Information" means all information whether of a technical, business, financial or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, customers, business plan, copyrights, trademarks, patents, promotional and marketing activities, finances and other business affairs) that is or may be disclosed or imparted by one party ("Disclosing Party") to the other ("Receiving Party"), whether or not marked "confidential", including both the existence and content of discussions between the parties with respect to a potential or actual business transaction or relationship as well as these Terms. Confidential Information may be in any written format, including an email and electronic media, or orally. The Receiving Party shall protect the Confidential Information of the Disclosing Party to the extent it would protect its own confidential information, but in no event not less than a commercially reasonable standard of care. This provision shall not apply to any information which is (i) now or becomes generally available to the public in the future, other than through acts or omissions of the Receiving Party or its Representatives in violation of these Terms, (ii) lawfully obtained by the Receiving Party from sources independent of Disclosing Party without receiving Party's knowledge of the information being governed by a confidentiality agreement or obtained under a legal or fiduciary obligation, or (iii) independently developed by the Receiving Party or the Receiving Party's Representatives without reference to the Confidential Information of the Disclosing Party. The fact that information included in the Confidential Information is or becomes otherwise available to the Receiving Party or its Representatives under clauses (i) through (iii) above shall not relieve the Receiving Party or its Representatives of the prohibitions of the confidentiality provisions of these Terms respect to the balance of the Confidential Information. If disclosure is requested under law, immediate written notice shall be provided to the Disclosing Party to allow time to seek an injunction or other protective measures, should they desire.
14. Buyer Provided Documentation. Buyer is to provide all necessary project related information prior to the project award per the Quote consistent with the mutually agreed upon schedule. Buyer is to verify the accuracy of the provided information prior to submitting it to Seller. Any discrepancies between the Buyer-supplied documentation and/or variations in actual site conditions from those indicated in the Buyer-supplied documentation as discovered during the project phase, may result in additional charges applicable via duly executed change order(s). If the Buyer supplied drawings are not verified by Seller, any design and/or drawing updates associated with said are done at the Buyer's risk, Seller shall not be responsible for any discrepancies. Seller is available to provide services on a time and materials ("T&M") basis to help verify and update the documentation. Buyer shall indemnify Seller as to any losses related to or resulting from Buyer's drawings, specifications, designs, product uses, and any patent or intellectual property infringement arising therefrom.
15. Buyer Project Support. Buyer is to provide knowledgeable operations, electrical and mechanical personnel familiar with site conditions to assist Seller's personnel during data collection site visits and project commissioning as stated in the Quote. Additional charges may result if the appropriate Buyer personnel are not available. System delays/waiting time and or weather delays, not due to Seller's equipment, should be reasonable and may result in additional charges.



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16. Intellectual Property. All Confidential Information, proprietary knowledge, trade secrets, business knowhow, copyrights, and other intellectual property rights owned by a party prior to this Purchase Order or created outside of this Purchase Order, shall be held and solely owned by that party ("Background Intellectual Property"). Either party may use the Background Intellectual Property of the other party only to the extent required to perform hereunder. To the extent that Background Intellectual Property is necessary to reap the benefits of this agreement, a party shall give the other party a worldwide, non-exclusive, fully paid, perpetual, non-transferable license as to the necessary Background Intellectual Property for the sole and limited purpose that the party can use the Goods as contemplated hereunder. Upon final and full payment of the purchase price, Seller hereby assigns to Buyer, to the extent able, licenses to the embedded software in the Goods, which are owned by a third party and licensed to Seller in connection with the Goods, subject to all end user licensing agreements of the third party.
- a. PLC Programming Source Code. To the extent applicable, Seller clarifies that the PLC programming source code of the governor and/or excitation control systems ("Software") is noncommercial software that has been developed by Seller at private expense and shall not be deemed to have been produced under work produced for the equipment included in this quotation and is Seller's Background Intellectual Property. The Software, including modifications of the Software, is restricted Software, developed at private expense and is trade secret, which is confidential, privileged and proprietary to Seller as Seller's Background Intellectual Property. Software is being provided under restricted rights licenses. The Software delivered under these Terms may not be used, reproduced, or disclosed by Buyer except as follows. The Software may only be:
- Used or copied for use with the governor and/or excitation control system for which it was acquired;
 - Used or copied for use with a backup processor if the processor on which it was installed is inoperative;
 - Reproduced for safekeeping (archives) or backup purposes;
 - Modified, adapted, or combined with other processor software, provided that the modified, adapted, or combined portions of the derivative Software incorporating any of the delivered, processor Software shall be subject to same restrictions set forth in these Terms;
 - Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in these Terms (except that this limitation will not apply if Seller no longer supports such Software); and
 - Used or copied for use with a replacement processor.
- b. Third Party software. Notwithstanding any other provision in these Terms or any Purchase Order, the Buyer shall have only restricted rights in the Software required to be delivered or otherwise provided to the Buyer under these Terms. Ownership of all other software, which is not Seller's Background Intellectual Property and owned by another third party, which Seller is required to be delivered or otherwise provided to the Buyer under these Terms, will reside with the applicable third party, upon Buyer agreeing to the end user licensing agreement of the third-party software provider.
17. Successors and Assigns. These Terms shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. Either party may assign with the written permission of the other party, which may be withheld for any reason.

Governing Law. All Purchase Orders shall be governed by and construed according to the laws of the State of Wisconsin.