

OFFICE OF THE CITY ATTORNEY
DAVIN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4684

AGREEMENT

36526

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIS AGREEMENT is made and entered, as of January 26, 2023, for reference purposes only, pursuant to Resolution No. RES-22-0154, adopted by the City Council of the City of Long Beach at its meeting on September 6, 2022, by and between XYLEM WATER SOLUTIONS U.S.A., INC., a Delaware corporation ("Seller"), with a place of business at 11161 Harrel Street, Mira Loma, California 91751, and the CITY OF LONG BEACH ("City"), a municipal corporation.

WHEREAS, the City desires to purchase submersible fill pumps for the Rainbow Lagoon Facility; and

WHEREAS, City did by Resolution No. RES-22-0154 determine that the City's need to purchase submersible fill pumps for the Rainbow Lagoon Facility could only be met by Seller; and

WHEREAS, no useful purpose would be served by advertising for bids and to do so would constitute an idle and useless act and an unnecessary expenditure of public funds; and

WHEREAS, the City Council authorized the City Manager to enter a contract with Seller to purchase submersible fill pumps for the Rainbow Lagoon Facility;

NOW, THEREFORE, in consideration of the mutual terms and conditions stated herein, the parties agree as follows:

1. Equipment.

A. Seller shall sell, furnish and deliver to City the submersible fill pumps for the Rainbow Lagoon Facility ("Equipment") attached hereto as Exhibit "A" and incorporated herein by reference, as authorized by Resolution No. RES-22-0154. Seller warrants that Seller owns the Equipment and has the right to transfer title of the Equipment to City; Seller shall defend, indemnify and hold City harmless from any breach of this warranty. City shall be entitled to all warranties provided by the manufacturer of the Equipment.

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 B. In consideration of City's payment hereunder, Seller shall
2 provide the Equipment.

3 C. Seller shall coordinate its performance with City's
4 representative, named in Exhibit "B", attached hereto and incorporated by this
5 reference. Seller's representative is named in Exhibit "C", attached hereto and
6 incorporated by this reference.

7 2. Purchase Price. City shall pay Seller in due course of payments,
8 following receipt of an invoice from Seller and upon acceptance from City, for submersible
9 fill pumps for the Rainbow Lagoon Facility, the prices shown in Exhibit "A", in an amount of
10 One Hundred Forty-Five Thousand Two Hundred Forty-Two Dollars (\$145,242), with a ten
11 percent (10%) contingency in the amount of Fourteen Thousand Five Hundred Twenty-
12 Four Dollars (\$14,524), for a total amount not to exceed One Hundred Fifty-Nine Thousand
13 Seven Hundred Sixty-Six Dollars (\$159,766).

14 3. Term. The term of this Agreement shall begin at 12:01 a.m. on
15 October 1, 2022, and shall end at midnight on September 30, 2023, unless sooner
16 terminated by completion of purchase of the submersible fill pumps for the Rainbow
17 Lagoon Facility.

18 4. Warranty. City shall have the benefit of the manufacturer's warranties
19 on the Equipment.

20 5. Mutual Waiver and Limitation of Liability. City and Seller (inclusive of
21 their respective officers, directors, members, partners, subcontractors, and employees)
22 shall not be liable to each other for loss of profit or revenue, loss of use or business
23 opportunity, loss of contract, cost of obtaining alternative performance, or for any indirect,
24 consequential, special, incidental and punitive damages. The aggregate liability of each
25 party, whether under contract law, in tort (including negligence) or otherwise, is limited to
26 the Purchase Order price ("Cap"). This Cap does not apply to: (a) costs, losses, or
27 damages for destruction of tangible property, (b) bodily injury, sickness, or death of any
28 persons; (c) gross negligence or willful misconduct; or (d) claims covered by insurance

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 8th Floor
Long Beach, CA 90802-4684

1 provided by Seller, under Paragraph 6, for which the cap shall be the amount of proceeds
2 recoverable under such insurance.

3 6. Insurance.

4 A. As a condition precedent to the effectiveness of this
5 Agreement, Seller shall procure and maintain, at Seller's expense for the duration
6 of the Agreement, from insurance companies that are admitted to write insurance in
7 California and have ratings of or equivalent to A:V by A.M. Best Company or from
8 authorized non-admitted insurance companies subject to Section 1763 of the
9 California Insurance Code and that have ratings of or equivalent to A:VIII by A.M.
10 Best Company the following insurance:

11 i. Commercial general liability insurance (equivalent in
12 scope in ISO from CG 00 01 11 85 or CG 00 01 10 93) naming the City of
13 Long Beach, the State of California and their Boards, officials, employees,
14 and agents as additional insureds (on a form equivalent in coverage scope
15 to ISO forms CG 20 10 11 85, CG 20 26 11 85, or to both CG 20 10 07 04
16 and CG 20 37 07 04, or to both CG 20 33 07 04 and CG 20 37 07 04) from
17 and against claims, demands, causes of action, expenses, costs, or liability
18 for injury to or death of persons, or damage to or loss of property arising out
19 of activities performed by or on behalf of the Seller in an amount not less than
20 One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars
21 (\$2,000,000) general aggregate. This coverage shall include but not be
22 limited to broad form contractual liability, cross liability, independent
23 contractors liability, and products and completed operations liability. The
24 coverage shall contain no special limitations on the scope of protection given
25 to the City, its boards and commissions, their officials, employees and
26 agents. This policy shall be endorsed to state that the insurer waives its right
27 of subrogation against City, its boards and commissions, and their officials,
28 employees and agents.

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 8th Floor
Long Beach, CA 90802-4804

1 ii. Workers' Compensation Insurance as required by the
2 California Labor Code and employer's liability insurance in an amount not
3 less than One Million Dollars (\$1,000,000). This policy shall be endorsed to
4 state that the insurer waives its right of subrogation against City of Long
5 Beach, the State of California, and their Boards, officials, employees and
6 agents.

7 iii. Professional liability or errors and omissions insurance
8 in an amount not less than One Million Dollars (\$1,000,000) per claim
9 covering the services provided pursuant to the Agreement.

10 iv. In lieu of completing the insurance endorsement forms
11 provided in the specifications, Seller may submit evidence of insurance on
12 the standard ACORD form together with a copy of the appropriate additional
13 insured endorsement as described above. The ACORD form shall indicate
14 that the requirements listed in the following paragraph have been made a
15 part of each policy of insurance as required above.

16 v. Commercial automobile liability insurance (equivalent in
17 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in
18 an amount not less than Five Hundred Thousand Dollars (\$500,000)
19 combined single limit per accident.

20 B. Any self-insurance program, self-insured retention, or
21 deductible must be separately approved in writing by City's Risk Manager or
22 designee and shall protect City, its officials, employees and agents in the same
23 manner and to the same extent as they would have been protected had the policy
24 or policies not contained retention or deductible provisions.

25 C. Each insurance policy shall be endorsed to state that coverage
26 shall not be reduced in coverage, non-renewed, or canceled except after thirty (30)
27 days prior written notice to City, and shall be primary and not contributing to any
28 other insurance or self-insurance maintained by the City, its officials, employees,

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 and agents, and shall be endorsed to state that coverage maintained by City shall
2 be excess to and shall not contribute to insurance or self-insurance maintained by
3 Seller. Seller shall notify the City in writing within five (5) days after any insurance
4 required herein has been voided by the insurer or cancelled by the insured.

5 D. If this coverage is written on a "claims made" basis, it must
6 provide for an extended reporting period of not less than one hundred eighty (180)
7 days, commencing on the date this Agreement expires or is terminated, unless
8 Seller guarantees that Seller will provide to the City evidence of uninterrupted,
9 continuing coverage for a period of not less than three (3) years, commencing on
10 the date this Agreement expires or is terminated.

11 E. Seller shall require that all contractors and subcontractors
12 which Seller uses in the performance of these services maintain insurance in
13 compliance with this Section unless otherwise agreed in writing by City's Risk
14 Manager or designee.

15 F. Prior to the start of performance, Seller shall deliver to the City
16 certificates of insurance and required endorsements for approval as to sufficiency
17 and form. In addition, Seller shall, within thirty (30) days prior to expiration of the
18 insurance required hereunder, furnish to the City certificates of insurance and
19 endorsements evidencing renewal of the insurance. City reserves the right to require
20 complete certified copies of all policies of Seller and Seller's subcontractors at any
21 time. Seller shall make available to the City's Risk Manager or designee all books,
22 records and other information relating to the insurance during normal business
23 hours.

24 G. Any modification or waiver of the insurance requirements
25 herein shall only be made with the written approval of the City's Risk Manager or
26 designee. Not more frequently than once a year, the City's Risk Manager or
27 designee may require that Seller and Seller's subcontractors change the amount,
28 scope or types of coverages required in this Section if, in his or her sole opinion, the

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 amount, scope, or types of coverages herein are not adequate.

2 H. The procuring or existence of insurance shall not be construed
3 or deemed as limitation on liability relating to Seller's performance of services or as
4 full performance of or compliance with the indemnification provisions of this
5 Agreement.

6 7. Notice. Notice shall be in writing and personally delivered or deposited
7 in the U.S. Postal Service, first class, registered or certified, return receipt, postage prepaid,
8 to Seller at the address first stated above, and to City at 411 West Ocean Boulevard, Long
9 Beach, California 90802 Attn: City Manager. Notice shall be deemed given on the date of
10 personal deliver or on the date shown on the return receipt, whichever first occurs. Notice
11 of change of address shall be given as other notices.

12 8. Assignment. Seller shall not, except for moneys due and payable
13 hereunder, assign its rights or delegate its duties hereunder, or any interest herein, or any
14 portion hereof, without the prior written approval of City. Any attempted assignment or
15 delegation shall be void, and any assignee or delegate shall acquire no right or interest by
16 reason of such attempted assignment or delegation. Furthermore, Seller shall not
17 subcontract any portion of the performance required hereunder without the prior written
18 approval of City.

19 9. Miscellaneous.

20 A. In connection with performance of this Agreement and federal
21 laws, rules and regulations, Seller shall not discriminate in employment or in the
22 performance of this Agreement on the basis of race, religion, national origin, color,
23 age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
24 disability.

25 B. This Agreement was created as a joint effort of both parties and
26 neither it nor any part of it shall be construed against one party as the drafter.

27 C. This Agreement, including Exhibits, shall not be amended, nor
28 any provision or breach hereof waived except in a writing signed by the parties which

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

expressly refers to this Agreement.

D. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Any action involving this Agreement shall be brought in the Los Angeles County Superior Court, Long Beach Judicial District.

E. This Agreement, including Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, or preprinted terms and conditions of the Purchase Order to the extent they are inconsistent with this Agreement, with respect to the subject matter herein.

F. In the event of any conflict or ambiguity between this Agreement and any Exhibit, the provisions of this Agreement shall govern.

G. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees.

H. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement, or of any right to damages or indemnity stated herein. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

I. Termination of this Agreement shall not affect rights or liabilities of the parties which accrued prior to termination and shall not extinguish any warranties.

J. Seller shall not use the name of City, its officials or employees in any advertising or solicitation for business nor as a reference without the prior written approval of City's City Manager.

K. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties hereto have caused this document to be duly executed with all of the formalities required by law as of the date first stated above.

XYLEM WATER SOLUTIONS U.S.A., INC.,
a Delaware corporation

March 8th, 2023

By [Signature]
Name Kyle Foushee
Title VP, FINANCE

March 8th, 2023

By [Signature]
Name Math Fisher
Title VP, Treasury

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

"Seller"

CITY OF LONG BEACH, a municipal
corporation

March 10, 2023

By Linda J. Jabum
City Manager

"City"

This Agreement is approved as to form on MARCH 9, 2023.

DAWN MCINTOSH, City Attorney

By [Signature]
Deputy

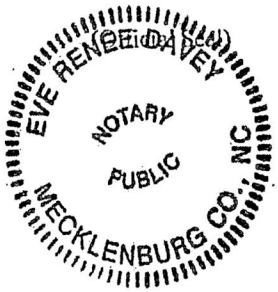
G.S. § 10B-41 NOTARIAL CERTIFICATE FOR
ACKNOWLEDGMENT

Mecklenburg County, North Carolina

I certify that the following person(s) personally appeared before me this day, each
acknowledging to me that he or she signed the foregoing document:

Kyle Foushee Matthew Fisher
Name(s) of principal(s)

Date: March 8, 2023



Eve Renee Davey
Official Signature of Notary

Eve Renee Davey, Notary Public
Notary's printed or typed name

My commission expires: 12/26/27

OPTIONAL

This certificate is attached to a _____, signed by _____
Title/Type of Document Name of Principal Signer(s)

on _____, and includes _____ pages.
Date # of pages

EXHIBIT "A"

PROPOSAL WITH RATES



June 27, 2022

THE CITY OF LONG BEACH
6204 E SECOND STREET
LONG BEACH CA 90803
ATTN: MR. KELLY ARMSTRONG
SUPERVISOR

*Xylem Water Solutions USA, Inc.
Flygt Products*

11161 Harrel Street
Mira Loma, CA 91752
Tel (951) 332-3668
Fax (951) 332-3679

Quote # 2022-LAB-0222 Alternate 2, Version 3

Project Name: ABS Replacement for Lagoon

Xylem Water Solutions USA, Inc. is pleased to provide a quote for the following Flygt equipment.

NP 3202..095 HIGH CHROME FLYGT PUMP

Qty	Part Number	Description	Unit Price	Extended Price
2	3202.095-YYYY	Flygt Model NP-3202.095 8" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 45 HP 1150 RPM motor, 641 impeller, 1 x 50 Ft. length of SUBCAB 4G16+S(2x0,5) submersible cable, FLS leakage detector, volute is prepared for Flush Valve. Option for Tank Guard 412 Internal and Epoxy Coating CONNECTION,DISCH 8X8" CI EPO		
2	374 76 46			
4	255 47 01	SLEEVE,NBR		
2	14-58 91 06	HOOK,SAFETY ASSEMBLY SS		
2	14-58 95 40	HARDWARE,DISC CONN ASSY 304SS+ 302SS ALT.		
2	14-59 00 00	KIT,HARDWARE 3/8IN SS (2X)		
40'	14-48 71 18	CHAIN 1/2" 316SS SWL7350#		
2	14-58 72 10	KIT,CHAIN FITTING 316SS+ FLYGT SWL 2500#		
2	14-40 71 29	MINI-CASII/FUS 120/24VAC,24VDC		
2	14-40 71 30	SOCKET,11-PIN BACK MOUNTING		
2	671 56 08	ANODE SET,ZINC		
2	661 54 01	BRACKET,GUIDE BAR U. 3" 316SS		
2	00ZZZZ0	TANK GUARD ADDER		

NP 3202..095 HIGH CHROME
FLYGT PUMP Price

\$ 118,464.00



Regent@USX

NOTE : SAME AS P/N 3202.095-0092 EXCEPT WITH TANK GUARD EPOXY COATING INTERNAL AND EXTERNAL

2" STAINLESS STEEL GUIDE RAILS X 20' STD LENGTH				
Qty	Part Number	Description	Unit Price	Extended Price
80'	14-49 01 03	TS3162 FEET 2"GUIDE RAIL 316SS		
2" STAINLESS STEEL GUIDE RAILS X 20' STD LENGTH Price				\$ 4,352.00

START UP AND TRAINING				
Qty	Part Number	Description	Unit Price	Extended Price
1	14-69 00 09A	START UP,FLYGT,NO TAX 1- TP MODELS: 3000,7000,8000		
START UP AND TRAINING Price				\$ 1,496.00

SUB- Total Price	\$ 124,312.00
Freight Charge	\$ 7,427.00
Total Price	\$ 131,739.00

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.xyleminc.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 2020)
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:** Prepaid
- Time of Delivery:** Approx. 18-21 working weeks after release of order
- Validity:** This Quote is valid for sixty (60) days.



Page 2 of 3

Notes / Exclusions: This Quote includes only the items listed specified above.

1. Flygt is quoting MiniCAS for pump protection and monitoring and control. This is installed inside the panel
2. Items not included: Concrete, excavation, piping, eccentric reducers/enlargers and installation, anchor bolts, non-standard items. All others not mentioned in the above proposal
3. Stainless Steel Guide Rails Schedule 40 T-316L welded stainless pipe per ASTM A-312 x 20' in the above quote
4. Old control panel will be used. Xylem Flygt will recommend Magnetic Starter and Breaker (TO FOLLOW) . Installation and Wiring is In-House.
5. Zinc Anodes has been added to the quote to be installed in Pump Volute for the prevention of corrosion. Anodes has to be checked regularly if the need to add arises during time
6. Pump Option to use Tank Guard 412 Internal and External Coating for Seawater Application
7. Flygt offer Gold PMA which will include One PM Service Visit and Multi Point inspection that will be completed Approximately One Year after Purchase. When purchase with New Pumps, Xylem will provide Additional 12 -Month Warranty (To the 100% Warranty) which extends the product warranty by an additional year. Adder \$775.00 per pump .

Terms of Payment: 100% N45 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.

Validity: This Quote is valid for sixty (60) days.

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

Sincerely,



Ricardo Guanlo
Direct Sales Representative
Cell: 662-382-3930
ricardo.guanlo@xylem.com
Fax: 951-332-3679



Quantity

1.00

Unit Price

\$131,739.00000

Unit of Measure

EACH

Taxable Amount

\$131,739.00

Sales Tax Amount

\$13,503.25

Tax

Credit Amount

\$0.00

Line Item Total

\$145,242.25

EXHIBIT "B"

City's Contact

Charlene Angsuco, Project Management
Officer 562/254-6747
Charlene.Angsuco@LongBeach.Gov

EXHIBIT "C"

CONTRACTOR'S CONTACT IS
RICARDO GUANIO, SALES REPRESENTATIVE
562/382-3930
EMAIL: RICARDO.GUANIO@XYLEM.COM