

Assessor's Parcel Number: N/A

Date: JULY 11, 2019

Recording Requested By:

Name: HEATHER MACDONNELL, PUBLIC WORKS

Address: _____

City/State/Zip: _____

Real Property Transfer Tax: \$ N/A



00094039201909316140080087

KAREN ELLISON, RECORDER

CONTRACT #2019.122
(Title of Document)

CONTRACT FOR THE PURCHASE OF GOODS

FILED

A CONTRACT BETWEEN

NO. 2019-122

DOUGLAS COUNTY, NEVADA

7-11-19
DATE

AND

DOUGLAS COUNTY CLERK

INDEN AM

DEPUTY

XYLEM WATER SOLUTIONS USA, INC.

This Contract for the Purchase of Goods (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada, (the "County"), and Xylem Water Solutions USA, Inc., a Delaware Corporation ("Vendor" or "Supplier"). The County and Vendor are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

1. TERM AND EFFECTIVE DATE OF CONTRACT. The Contract will become effective on the date it is approved and signed by representatives of both Parties.

2. GOODS TO BE PROVIDED. The goods to be provided under this contract consist of: two Flygt submersible pumps, in accordance with the specifications as set forth in **Exhibit A** ("goods"), which will be used by the County for purposes including, but not limited to, municipal wastewater applications.

3. DELIVERY. The vendor agrees to deliver the goods described in Paragraph 2, in accordance with the specifications set forth in Exhibit A, and upon acceptance by the County, title to the goods shall pass to the County. The County shall have the right to inspect the goods upon arrival and within a commercially reasonable time. The County must give notice to the vendor of any claim for damages on account of condition, quality, or grade of the goods and must specify the basis of the claim in detail. Acceptance of the goods described in this Contract is not a waiver of UCC revocation of acceptance rights or of any right of action that the County may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on the vendor until the title has passed to the County. If provided by the vendor, the County agrees to follow reasonable instructions regarding return of the goods. This contract is subject to the provision of no arrival, no sale terms, but proof of shipment shall be given by the vendor; each shipment to constitute a separate delivery. A variation of thirty (30) days in time of shipment or delivery from that specified in the contract does not constitute a ground for rejection.

4. PAYMENT FOR SERVICES. Vendor agrees to provide the goods set forth in Paragraph 2 for a total Price of One Hundred-Twenty Thousand, Eight Hundred and Thirty-Nine Dollars, and Ninety-Two Cents (\$120,839.92) (the "Contract Price"). Unless Vendor has received a written exemption from the County, Vendor shall submit payment requests to the County upon delivery of the goods. The County will not issue payment prior to receipt of goods or services. Unless Vendor is in Breach or County is reasonably exercising some other remedy hereunder, the County's obligation for payment shall be due and payable within 21 days of the date on which title to the goods is transferred to the County, as more particularly set forth in Paragraph 3.

5. NONAPPROPRIATION. All payments required pursuant to the Contract are contingent upon the availability of County funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations between the Parties will not exceed those monies appropriated and approved by the County for the Contract for the then current fiscal year under the Local Government Budget Act. The Contract will terminate and the County's obligations will be extinguished if the County fails to appropriate the necessary funding. Nothing in the Contract will be construed to provide Vendor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Vendor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Vendor. Vendor will have no claim of any sort to the unexpended funds.

6. CONSTRUCTION OF CONTRACT. The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. The Contract Documents consist of this document, and Exhibit A. The Parties agree to be bound by the terms, conditions and specifications set forth in all Contract Documents, except as specifically modified or amended. The terms of the Contract Documents shall, to the extent reasonably practical, be read as complimentary to one another. In the event of an irreconcilable conflict between the terms of the Contract Documents, the terms of this document shall prevail, thereafter the terms of Exhibit A.

7. BREACH AND REMEDIES. Failure of either party to perform any obligation of this contract shall be deemed a breach. In the event of a breach, the party asserting breach may, in addition to any remedies or rights afforded by Nevada law, cancel this Contract with respect to any executory obligations. All rights and remedies are cumulative with one another and with those provided by law; exercise of one remedy or right is not waiver of any other right or remedy afforded.

8. DISPUTE RESOLUTION. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court.

9. COMPLIANCE WITH APPLICABLE LAWS. Vendor promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws.

10. ASSIGNMENT. Vendor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

11. WARRANTIES. Vendor warrants and represents each of the following with respect to any goods provided under this Contract: the goods provided will be fit and sufficient for the particular purpose set forth in Paragraph 2; the goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by this Contract are ordinarily intended for use in government operations; the goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship; the goods shall conform to the standards and specifications set forth in Exhibit A; If vendor has supplied a sample to the County, the goods delivered shall conform in all respects to the sample; the goods shall be uniform and without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units; the vendor has exclusive title to the goods and shall pass title to the County free and clear of all liens encumbrances, and security interests.

12. INDEMNIFICATION. Vendor agrees and warrants that the purchase or use of the goods shall not infringe upon any United States or foreign patent, trademark, license, or other interest, and the vendor shall indemnify the County against all judgments, decrees, costs and expenses resulting from any alleged infringement and shall defend, upon written request of the County, at Vendor's own expense, any action which may be brought against the County, its vendees, lessees, licensees, or assignees under any claim of patent infringement in the purchase of the vendor's goods. If the County is enjoined from using such goods, the vendor shall repurchase such goods from the County at the original purchase price. The County shall notify the Vendor promptly of any such suit. If the County compromises or settles any such suit without the written consent of the vendor, the vendor shall be released from the obligation to indemnify. It is understood by both parties that the warranties created by this Contract, as well as all warranties arising by operation of law that affect the rights of the parties, shall be cumulative. The benefit of any warranty made in this Contract shall be in favor of the County and the benefit of any warranty shall apply to both personal injury and property damage.

13. PUBLIC RECORDS LAW. Vendor expressly understands and agrees that all documents submitted, filed, or deposited with the County by Vendor, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Vendor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

14. LIMITED LIABILITY. The County will not waive and intends to assert available NRS Chapter 41 Limitations in all cases. Contract liability of either party shall not be subject to punitive damages.

15. MODIFICATION OF CONTRACT. The Contract and the attached exhibit(s) constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

16. AUTHORITY. The Parties represent and warrant that they have the authority to enter into this agreement. Each signatory individually warrants that he or she is authorized to sign on behalf of the party for whom he or she is signing.

17. THIRD PARTY BENEFICIARY. Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Vendor or County.

18. FORCE MAJEURE. Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to protests, strikes, legal impossibility, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, emergencies or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

19. WAIVER. The County's failure to insist upon Vendor's performance of any obligation hereunder shall not constitute a waiver of the County's right to enforce that obligation and the County may require compliance with that obligation or any other obligation at any time.

20. NOTICES. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

To County: Douglas County
Attn: Public Works Department
Post Office Box 218
Minden, Nevada 89423

To Vendor: Xylem Water Solutions, USA, Inc.
Attn: Pete Galati
14125 South Bridge Circle
Charlotte, NC 28273

21. CONFLICT OF INTEREST. By signing the Contract, Vendor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

Xylem Water Solutions, USA, Inc.

By: *Graham Hackett*
Name: Graham Hackett
Title: Regional Sales Manager 7/02/19 (Date)

Douglas County

By: *William B. Penzel*
William B. Penzel, Chairman (Date)
Douglas County Board of Commissioners

Exhibit A: Quote #2019-FFB-0231



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

May 15, 2019

790-A Chadbourne Rd
Fairfield, CA 94534
Tel (707) 422-9894
Fax (707) 422-9808

DOUGLAS COUNTY
PO BOX 218
MINDEN NV 89423

Quote # 2019-FFB-0231
Re: Douglas County, NV Spare CP3300 for Clubhouse LS

Flygt, a Xylem brand, is pleased to provide a quote for the following equipment.

Equipment

Qty	Description	Unit Price	Extended Price
2	Flygt Model NP-3301.095 6" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 85 HP 1750 RPM motor, 462 impeller, 1 x 50 Ft. length of SUBCAB 3x50+2G35/2+S(2x0,5) submersible cable, FLS leakage detector, volute is prepared for Flush Valve	\$ 58,336.46	\$ 116,672.92
Total Project Price			\$ 116,672.92
Freight Charge			\$ 4,167.00
Total Project Price			\$ 120,839.92

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.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 & Conditions: Attached please find our Standard Terms & Conditions of Sale that apply to this order.

Taxes: State, local and other applicable taxes are not included in this quotation.

Time of delivery: Approximately 10 working weeks after approval of order and receipt of signed Purchase Order or attached Customer Acceptance Form.

Terms of delivery: PP/Add Order Position

Terms of payment: Net 30 Standard

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

Validity: This Quote will expire in ninety (90) days unless extended in writing by Xylem Water Solutions USA, Inc.

Changes: This Quote is based on the current design criteria provided to Xylem Water Solutions USA, Inc. Revisions may result in price changes.





Xylem Water Solutions USA, Inc.
Flygt Products

We thank you for your interest in Flygt equipment from Xylem Water Solutions USA, Inc., and look forward to being of service to you in the near future.

Sincerely,

Peter V. Galati II
Sales Representative
Phone: 707/430-0166
Cell: 916/804-8899
pete.galati@xyleminc.com
Fax: 707-422-9808

Sylvia Unpingco
Inside Sales
Phone: 707-430-0171

sylvia.unpingco@xyleminc.com

Customer Acceptance

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.

A signed copy of this Quote is acceptable as a binding contract.

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

Quote #: 2019-FFB-0231
Customer Name: DOUGLAS COUNTY
Job Name: Spare CP3300 for Clubhouse LS
Total Amount: \$ 116,672.92 (excluding freight)

Signature:

Name: William B. Pritger
(PLEASE PRINT)

Company/Utility: Douglas County

PO: _____

Address: PO Box 218
Minden, NV 89423

Date: June 24, 2019

Phone: 775-783-6480

Email: pritger@douglasnv.us

Fax: 775-782-6266

Douglas County State of Nevada

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

By Deputy
Date: June 24, 2019

