

RESOLUTION NO. 906

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS FOR PURCHASE OF ONE WEMCO PREROSTAL PUMPING SYSTEM FOR LIFT STATION #3A FROM APSCO, LLC.

WHEREAS, the City of Gig Harbor is in need of replacing the jockey pump at Lift Station #3A; and

WHEREAS, the Wemco Prerostal Pumping System will replace existing pump and provide needed low end and mid range pumping capacity at Lift Station #3A; and

WHEREAS, the Wemco Prerostal Pumping System would eliminate the need for existing mixer and mechanical grit removal; and

WHEREAS, the Wemco Prerostal Pumping System will help reduce electrical demand charges; and

WHEREAS, APSCO, LLC is the sole source supplier for this product and there is no known equal; and

WHEREAS, the City's purchasing policy set forth in Resolution No. 593 authorizes the waiver of competitive bidding in the event the product comes from a sole supplier; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Waiver of Competitive Bidding. As authorized by Section 2 of Resolution No. 593, competitive bidding is hereby waived for the purchase of one Wemco Prerostal Pumping System, as APSCO, LLC is the sole supplier of the product.

RESOLVED this 23th day of July, 2012.

CITY OF GIG HARBOR



MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:



CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY



FILED WITH THE CITY CLERK: 07/18/12
PASSED BY THE CITY COUNCIL: 07/23/12
RESOLUTION NO. 906

EXHIBIT A



APSCO, LLC

PO Box 2639 • Kirkland, WA 98083-2639
Ph: (425)822-3335 • Fax: (425)827-6171
E-mail: apSCO@apSCO-inc.com

ORDER AGREEMENT

| | | | |
|---------------|-----------------------------|------------|-----------------|
| TO: | Mr. Darrell Winans | FROM: | Joe Kernkamp |
| <u>Email:</u> | winansd@cityofgigharbor.net | PHONE: | 425-822-3335 |
| Phone: | 253-851-8999 | DATE: | 7/9/12 |
| COMPANY | City of Gig Harbor | PAGES: | 1 of 13 |
| Customer Ref: | | APSCO REF: | LS #3A retrofit |

The City of Gig Harbor Wishes to order From APSCO, LLC. One (1) Wemco Prerostal Pumping System as Describe in quote dated July 5th for installation at lift station 3A to replace the jockey pump designed for 1000 gpm at 55 ft TDH. System includes Prerotation basin, Hidrostal pump and motor, variable frequency drive and required ultrasonic level control sensor.

This Order Agreement between the City of Gig Harbor, with offices located at 3510 Grandview St. Gig Harbor, WA 98335, and APSCO, LLC, with offices at 1120 8th st. Kirkland, WA 98033, establishes the terms and conditions of sale as follows:

1. Purchase Price: \$71,922.00 Lump Sum (includes freight, excludes taxes). Washington State Sales tax can be collected by APSCO, LLC at a rate of 8.5%
2. Shipping Terms: FOB Origin, Freight Included and allowed to the jobsite.
3. Payment Terms: 30% upon Order Placement, 60% upon delivery and 10% upon start up and training.
4. Warranty: The Seller warrants the unit until 24 months after the Owner acceptance of the product or until 30 months after delivery of such product to Buyer, whichever is earlier, that each product will be free of defects in material and workmanship. Seller will cause any products whose defect is covered under this warranty to either be replaced or be repaired at no cost to the Owner. Any

replacement Products will be warranted only for any remaining term of the original limited warranty period and not beyond that term.

5. Ship to Address: City of Gig Harbor WWTP

4216 Harborview Dr.

Gig Harbor, WA

98335

6. The attached APSCO terms and conditions of Sale shall apply to this order and are fully incorporated for reference.

I acknowledge that the foregoing represents the Order Agreement and our Acceptance of that terms stated above. Further, I hereby certify that I am authorized to bind the agency to contractual matter.

City of Gig Harbor

By: _____ DATE: _____

Print

Name: _____

Title: _____

Note: Your signed Order Agreement must be returned with 30% payment in order for us to commence with production. Thank you for your cooperation in this matter, please reply by email to jkernkamp@apsco-llc.com

Sincerely,

Joe Kernkamp
Vice President



APSCO, LLC

PO Box 2639 • Kirkland, WA 98083-2639

Ph: (425)822-3335 • Fax: (425)827-6171

E-mail: apsco@apsco-llc.com

APSCO LLC TERMS AND CONDITIONS OF SALE

1. **SCOPE:** Unless otherwise agreed in writing, Seller's (APSCO, LLC) acceptance of Purchaser's purchase order is conditioned upon Purchaser accepting these terms and conditions. Seller sells its equipment in accordance with the following provisions.

2. **PRICES:** Prices are F.O.B. Seller's or its supplier's plant. Prices do not include any federal, state or local sales, use or other taxes and taxes will be added to the sale price for Purchaser's account.

3. **TERMS:** Unless otherwise agreed, all invoices are due and payable 100% net 30 days from date of shipment or notification of readiness to ship. All credit terms are offered subject to Purchaser's credit worthiness with said worthiness to be determined solely by the Seller. Full payment is due as indicated and late payment may be subject to a specified service charge. Purchaser shall pay the full invoiced amount to Seller, regardless of any payment schedule between Purchaser and the Owner, or others. If Purchaser is in default in any payment, Seller may offset any monies of Purchaser available to Seller or in Seller's possession; declare all payments for work completed immediately due and payable; stop all further work until payments are brought current and/or require advance payment for future shipments.

4. **ITEMS INCLUDED:** Each sale includes only the equipment described in the order. Responsibility for proper operation of equipment if not installed or operated in accordance with Seller's instructions, rests entirely with Purchaser. Seller shall supply only those safety devices, if any, described in the order or in its proposal and drawings, and shall comply with those provisions of the federal Occupational Health and Safety Act of 1970 which Purchaser and Seller have identified as specifically applicable to the manufacture of Seller's equipment hereunder. Seller shall not be responsible for compliance with state or local safety and health statutes of special application unless it has accepted such responsibility in writing.

5. **SECURITY INTEREST:** Seller retains a security interest in and right of repossession to the equipment until the full purchase price has been paid. Purchaser will not encumber nor permit others to encumber said equipment by any liens or security instruments. In the event legal action is necessary to enforce Purchaser's obligations under this order, Seller shall be entitled to recover its court costs and reasonable attorney's fees if it prevails. Purchaser shall provide insurance for Seller's benefit to protect Seller's interest against loss or damage until invoice is fully paid.

6. **SHIPMENTS AND DELIVERY:** Seller shall use its reasonable efforts to meet all shipment or delivery dates recited herein or in Purchaser's order, but any such dates are estimates only and are not guaranteed. Seller shall have no liability to Purchaser for damages or penalties, direct or indirect, for any delay in shipment or delivery, whether such delay is minor or substantial, nor shall Purchaser have the right to declare a breach of contract because of any such delay. Delivery of schedules are subject to prompt receipt by Seller of all necessary information and instructions from Purchaser, including any required approval of drawings, and establishment of agreed terms of payment. Unless otherwise agreed, all shipments are F.O.B. Seller's factory and all claims for damage, delay, or shortage arising from any shipment shall be made directly against the carrier by the Purchaser. When shipments are specified F.O.B. destination, Purchaser shall inspect the equipment, and notify Seller of any damage or shortage within seven days of receipt. Failure to so notify Seller shall constitute acceptance by Purchaser, relieving Seller of liability for damages or shortages. Unless prohibited by Purchaser, Seller shall make partial shipments of completed items for payment under terms of order.

7. **WARRANTY:** Seller warrants equipment of its manufacture only in accordance with its current applicable Seller's Product warranty against defects in workmanship and materials, which warranty is incorporated by reference and made a part hereof.

8. **PATENTS:** Seller agrees that it will defend and indemnify Purchaser against damages arising from proceedings, alleging that Seller's equipment infringes any apparatus claim of a patent existing as of date of order, provided Seller is given prompt written notice of such proceeding or threat thereof under a patent, and Purchaser

accords Seller full control of the defense, applicable patent/fraud counterclaims, settlement or compromise thereof and any recoveries thereunder. Purchaser agrees that it shall furnish Seller, on request; all needed information, assistance and authority to enable Seller to defend. Seller will reimburse Purchaser for actual out-of-pocket expenses, exclusive of legal fees, incurred in rendering assistance at Seller's request. The foregoing states the entire liability of Seller with respect to patent infringement. Purchaser agrees that it shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses to which the Seller may become liable by reason of any infringement or alleged infringement of a patent or patents arising out of performance of this order if the equipment is constructed in accordance with Purchaser's detailed drawings or designs submitted to Seller.

9. **CANCELLATION, SUSPENSION OR DELAY:** If Purchaser requests or causes a cancellation, suspension or delay of Seller's work, Purchaser shall pay Seller all appropriate charges incurred up to date of such cancellation, suspension or delay, plus Seller's overhead and reasonable profit. Additionally, all charges related to and risks incident to storage, disposition, and/or resumption of work shall be borne solely by Purchaser.

10. **LIMITATION OF LIABILITY:** Seller shall not be liable to Purchaser for any consequential or incidental damages of any nature for any reason whatsoever, whether such damages are based in contract or in tort, including strict liability or negligence. The remedies stated in Seller's warranty attached hereto constitute the sole and exclusive remedy of Purchaser for any defect in material and workmanship or performance failure of Seller's equipment. Seller's liability for direct damages shall not exceed the material portion of the contract price for the defective equipment.

11. **CHANGES AND BACKCHARGES:** Seller shall not be obligated to make any changes in or additions to the scope of the work unless Seller agrees thereto and an equitable adjustment is made to price and/or delivery. Seller will not approve or accept returns of or backcharges for labor, materials or other costs incurred in modification, adjustment, service or repair or equipment unless previously approved in writing by an authorized employee of Seller.

12. **CHANGES IN DESIGN:** With proper notification in writing to Purchaser, Seller reserves the right to modify the design and construction of equipment in order to incorporate improvements or to substitute material equal or superior to that originally specified. No charge shall be made to Purchaser for modifications made to Seller's option.

13. **PROPRIETARY INFORMATION:** All information furnished by Seller is solely for Purchaser's use in connection with the equipment purchased herein, and shall not be disclosed to any third party without Seller's prior written consent, unless required by law.

14. **FORCE MAJEURE:** The Seller shall be relieved of its obligations hereunder and of any liabilities contained herein whenever and to the extent to which the fulfillment of such obligations is prevented, frustrated or impeded by conforming to any statute or any rule, regulation, order or requisition made thereunder, or any consequence thereof, by state, federal, national or international prohibition or sanction, by war (whether declared or not), military activity, terrorism, acts of public enemies, accidents, fire, flood, nuclear fallout, acts of God or any cause of like or different kind beyond its control, or by reason of any industrial dispute, or any consequence thereof.

15. **GOVERNING LAW:** This agreement shall be interpreted in accordance with the laws of the State of Washington, U.S.A., which laws shall be deemed to be the governing law of this contract with regard to any disputes or questions of interpretation between the parties.

16. **ENTIRE AGREEMENT:** This proposal expresses the entire agreement between the parties hereto and supersedes any previous communications, representations, or agreements, whether oral or written, and is not subject to modification except in writing, signed by an authorized officer of each party.