

CITY OF YUBA CITY  
STAFF REPORT

**Date:** November 20, 2018  
**To:** Honorable Mayor & Members of the City Council  
**From:** Public Works Department  
**Presentation by:** Diana Langley, Public Works Director

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**Summary**

**Subject:** Mid-Year Capital Acquisition Requests

**Recommendation:** A. Approve the following mid-year capital acquisition purchases:

1. 10'x6" Orchard Disk
2. PAX Water Tank Mixing System Replacement
3. Lincoln Power Mig Welder
4. Ford F550 Half Dump Truck
5. Rhino GR Series Mower

B. Authorize the following supplemental appropriations and related transfers:

- \$15,615.60 from 8120-63473 to 8120-69201 for the (Item 1) 10'X6" Orchard Disk
- \$19,513.45 from 7120-63451 to 7120-69201 for the (Item 2) PAX Water Tank Mixing System
- \$5,164.14 from 7120-63801 to 7120-69201 for the (Item 3) Lincoln Power Mig Welder
- \$2,609.39 each from 3130-63684 to 3130-69201, 5115-63688 to 5115-69201, and 8120-63720 to 8120-69201 for the purchase of the (Item 5) Rhino GR Series Mower

C. Award the purchase of a PAX Water PWM400 Mixing System (Item 2) for the Sanborn Water Tank to G3 Engineering of Granite Bay, CA in the amount of \$19,513.45, with the finding that it is in the best interest of the City.

**Fiscal Impact:** \$136,188.69 as follows:

1. \$15,615.60 – 10'x6" Orchard Disc – Acct. No. 8120-69201
  2. \$19,513.45 – PAX Water Tank Mixing System – Acct. No. 7120-69201
  3. \$5,164.14 – Lincoln Power Mig Welder – Acct. No. 7120-69201
  4. \$60,000.00 – Ford F550 Half Dump Truck – Acct. No. 6610-69410
  5. \$7,828.17 – Rhino GR Series Mower – Acct. Nos. 3130-69201, 5115-69201, 8120-69201
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**Purpose:**

To authorize mid-year capital acquisition requests for improved operational efficiencies, customer service, and potential cost savings.

## **Background:**

The Public Works and Community Services Departments have identified the need for six (6) capital acquisitions that were not anticipated during the Fiscal Year 18/19 budget process. Staff is requesting authorization to purchase the following capital acquisitions mid-year:

1. 10'x6" Orchard Disc (Public Works – Wastewater)
2. PAX Water PWM400 Mixing System for Sanborn Water Tank (Public Works – Water)
3. Lincoln Power Mig Welder (Public Works – Water)
4. Ford F550 Half Dump Truck (Public Works – Street Maintenance)
5. Rhino GR Series Mower (Public Works – Street Maintenance, Wastewater, and Community Services – Parks)

A discussion of each item along with the fiscal impact is provided below.

## **Analysis:**

### **Item 1: 10'x6" Orchard Disk:**

The Wastewater Treatment Facility (WWTF) is responsible for the maintenance of six (6) evaporation ponds on the east side of the Feather River which hold wastewater effluent discharge from the facility for evaporation and percolation. Weed control of the evaporation ponds is critical both for effective operation and insect control; poorly maintained weeds and inefficient percolation produce an ideal habitat for mosquito reproduction. Sutter-Yuba Mosquito Vector Control District (Vector Control) monitors the mosquito population of the ponds and will intervene if the insects establish a habitat on the site, incurring costs for treatment and fines that the City must pay.

The evaporation ponds have historically been maintained by aerial and ground weed control contractors, which have been difficult to schedule as necessary and insufficient to maintain proper weed-growth levels. Subsequently, Vector Control has had to do a significant amount of treatment with a high cost to the City. Within the last year, the City has hired two WWTF Plant Maintenance staff members with agricultural and ground maintenance experience. Those employees evaluated the current methods and costs of pond maintenance and determined that the WWTF would have cost savings and improved operation by conducting the maintenance tasks in-house. Public Works repurposed a sprayer and began applying herbicides as-needed, with effective results; however, staff also determined that the ponds would be more appropriately maintained if they were also disked regularly to keep pond sediments from settling, which prevents the effluent from percolating properly and allows for weed growth. A 10'x6" Orchard Disk can be attached to the WWTF's John Deere tractor so that the disking can be done by staff on a preventative maintenance schedule, rather than incurring the higher costs and schedule delays of utilizing a contractor.

There are sufficient funds available in the WWTF maintenance budget for this acquisition (Account No. 8120-63473). For further analysis of maintenance costs and potential savings, please see Attachment 1. This acquisition is under \$50,000 and staff will follow the City's Purchasing Policies and Procedures for the requisition by issuing a Request for Quotation.

### **Item 2: PAX Water Tank Mixing System Replacement:**

The Sanborn Water Tank and Pump Station was constructed in 2010 in order to provide adequate water pressure in the water distribution system for the southwest section of Yuba City. A PAX Water PWM300 tank mixer was installed as part of the project. A PAX tank mixer is a submersible active mixing system which churns the water in the storage tank, preventing disinfection byproduct formation and maintaining uniform chemical and physical conditions throughout the tank. Lack of

adequate mixing could result in contaminants in the water above the allowable maximum contaminate level (MCL).

The Sanborn Tank PAX Water PWM300 mixer began experiencing an unexpected failure, where the upper levels of the tank are not mixing adequately. This failure did not occur until after the Fiscal Year 18/19 budget had been adopted. The replacement of the tank mixing system cannot be delayed until the Fiscal Year 19/20 budget in order to maintain adequate water quality and optimal operation. The current model from PAX Water Technologies, the PAX PWM400 V3, will connect with the existing electrical wiring and control elements in the structure; G3 Engineering, Inc. of Granite Bay, CA is the regional supplier for this manufacturer. Tank mixers from other manufacturers would require additional installation time and materials to adjust existing electrical infrastructure. For further information about the PAX mixing system's purpose and specifications, please see G3 Engineering's full proposal (Attachment 2).

There are sufficient funds in the Water Treatment Plant's Major Maintenance account for this replacement (Account No. 7120-63451).

#### Item 3: Lincoln Power Mig Welder:

General preventative and emergency maintenance of the Water Treatment Plant (WTP) is performed in-house by WTP Maintenance staff. A Lincoln Power Mig Welder is a necessary piece of equipment for both fabrication and repair metal work. As the Mig Welder is priced at over \$5,000, it is considered a capital acquisition and requires Council approval for its replacement.

There are sufficient funds in the Water Treatment Plant's Tools, Supplies, and Equipment account for this replacement (Account No. 7120-63801). This acquisition is under \$50,000 and staff will follow the City's Purchasing Policies and Procedures for the requisition by issuing a Request for Quotation.

#### Item 4: Ford F550 Half Dump Truck:

Public Works has evaluated the Corporation Yard's current vehicles and the equipment that the maintenance divisions haul and utilize on a frequent basis. Staff determined that the Department would be better served by acquiring a half dump truck to fulfill the operational gap between pickups and full-size dump trucks. There are sufficient funds available in the Vehicle Replacement Fund for this acquisition, as the Street Maintenance Division will be surplusng Vehicle #98-12, which has accumulated \$70,000. Staff will conduct a formal bid for the vehicle per the City's Purchasing Policies and Procedures and return to Council for bid award.

#### Item 5: Rhino GR Series Mower:

Public Works and Community Services are responsible for weed abatement at a variety of large-area City-owned properties, including detention and drainage ponds, Feather River Parkway, empty lots, and facility grounds. While the City has no dedicated equipment for this type of weed abatement, the Community Services Parks Maintenance Division has a flail mower which is approximately 20 years old, which staff has attempted to utilize for this task; however, the flail mower is beyond its lifespan and is not capable of cutting weeds with a diameter of more than 1", which are a frequent occurrence in these large-size lots and ponds. A flail mower is designed to be a finishing-type mower, which is targeted for 6-8" tall growth with thin stalks. Rather than cutting the tall and thicker weed stalks, the weeds wrap around the mower, disrupting the rotation and causing damage to the equipment in addition to failing to cut the targeted weeds. The flail mower has required significant repairs over the last year due to its age and the harsh conditions.

Staff has evaluated other options for addressing this task and has identified a Rhino Model GR484 Mower with rotary cutter as the appropriate piece of equipment for the abatement of large-diameter weeds. The Rhino GR Series Mower needs to be attached to a tractor, such as the WWTF's John Deere tractor model. The Street Maintenance, Wastewater Treatment Facility, and Parks Maintenance Divisions all require this piece of equipment for their weed-abatement responsibilities. Currently, the City could rent the equipment on an as-needed basis in order to meet this need and eliminate the damage to the flail mower from the inappropriate use, at a cost of approximately \$1,000 per week. There is and will continue to be significant need for the equipment now and into the future. Cost for renting the equipment is approximately \$1,000 per week; rental as necessary throughout the year would exceed the cost of the capital acquisition purchase.

There are sufficient funds in the Street Maintenance, Parks Maintenance, and Wastewater Treatment Facility Operating Budgets for this acquisition. This acquisition is under \$50,000 and staff will follow the City's Purchasing Policies and Procedures for the requisition by issuing a Request for Quotation.

**Alternatives:**

1. Deny the purchase of one or more of the acquisition requests.
2. Direct staff to request one or more of the acquisitions in the Fiscal Year 19/20 budget.
3. Direct staff to request additional quotes for the PAX Mixing System. This would require changes to the wiring and controls, increasing costs and labor.

**Recommendation:**

A. Approve the following mid-year capital acquisition purchases:

1. 10'x6" Orchard Disk
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C. Award the purchase of a PAX Water PWM400 Mixing System (Item 2) for the Sanborn Water Tank to G3 Engineering of Granite Bay, CA in the amount of \$19,513.45, with the finding that it is in the best interest of the City.

**Attachments:**

1. Item 1: 10'x6" Orchard Disk Cost Analysis
2. Item 2: PAX Water Mixing System – G3 Proposal 1775

Prepared by:

*/s/ Scarlett O. Harris*

Scarlett O. Harris  
Administrative Assistant

Submitted by:

*/s/ Steven C. Kroeger*

Steven C. Kroeger  
City Manager

Reviewed by:

Department Head

Finance

City Attorney

DL

RB

TH via email

# ATTACHMENT 1



## Memo

**Date:** 8/31/18  
**To:** Diana Langley, Public Works Director  
**From:** Joe Santanna, Plant Mechanic  
**CC:** Nate McCreedy, Wastewater Plant Maintenance Supervisor  
**Re:** Purchase a 10'x6" Disc

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The Wastewater Treatment Facility is recommending we repurpose the CAP funds for the emergency standby generator for lift station #3 of \$35,000 (8120-69201) for the purchase of a 10'x6" Disc. The generator for this location is no longer needed do to the fact that the Public Works department is obtaining one through a grant.

**Our objective is to maintain weeds and have efficient evaporation and percolation of the effluents we discharge to the ponds in Yuba County**

### Weed Control

We have currently tried controlling the weeds by aerial application which costs us \$900.00 to hire the applicator and \$1800 for the chemical to spray one 20 acre pond. If the applicator is available to apply right away we can control the weeds. But in most cases it takes two to three weeks before we can fit into the custom applicators schedule depending on time of year. By this time the weeds have gotten out of control. This in turn with poor percolation provides the perfect habitat for mosquitos to reproduce. Once the mosquito's start reproducing Sutter-Yuba Mosquito & Vector Control District steps in and has the ponds sprayed to prevent the outbreak of Mosquitos in the area to prevent the potential of passing on deadly diseases. The cost for them to apply chemical on 17 acre last year on 8/11/17 was \$5524.15. The total cost for Mosquito Vector's sewer pond treatments in 2017 was \$20979.02. This could have been considerably less if the ponds were maintained correctly.

Earlier this year Jose and I started working on the weed control for Pond 6 which is 20 acre. We started by investing \$400.00 into an old sprayer and fixing it up so that we could apply chemicals to kill off the weeds. This took two applications which cost \$3600.00 in chemical and two eight hour days. After we applied the chemical we ended up renting a 10ft 6in disc for two 12 hour days that allowed us the chop up the weeds and reopen the ground. The rental cost on the disc was \$350.00 a day with a \$200.00 charge for drop off and pick up totaling \$900.00 for the rental. After performing these tasks we flooded pond six to allow for another pond to dry out and found that pond six was percolating more efficiently. After filling the pond we stopped the inflow and the water drained within a week. With further research and 12 year's experience in the Ag industry allowed me to come to the conclusion that we have not been maintaining our ponds properly. The fact that when you fill a pond sediments will settle and build up a cap that





## ATTACHMENT 2

**G3 Engineering, Inc.**  
P.O. Box 2148, Granite Bay, CA 95746  
Phone 916-797-1880 FAX 916-797-1881  
www.g3engineering.com

September 10, 2018

John Westhouse  
City of Yuba City

**Subject: Yuba City Sanborn Tank – Replacement PAX Mixer  
G3 Engineering Proposal 1775**

John,

We are pleased to provide a proposal for a replacement and upgrade to your PAX tank mixer for Yuba City's Sanborn Tank 1. We show your existing PAX mixer as a model PWM300, serial number 1168, purchased in 2010.

The PAX Water PWM400 V3 is a submersible active mixing system for potable water storage tanks and reservoirs. When operated correctly, the PAX Water PWM400 V3 mixer can rapidly eliminate thermal stratification, decrease ice formation, rapidly blend and distribute doses of residual disinfectant, and maintain uniform chemical and temperature conditions. Under some conditions, the mixing action can also reduce the rate of residual disinfectant loss and lower volatile disinfection byproduct levels inside the tank when used as part of an in-tank aeration system.

Installation of the PAX PWM400 mixer is very simple. The utility or contractor can perform a "wet-side" mixer installation while the tank is full by lowering the mixer into the tank access hatch using the optional Long Bail Handle and stainless-steel chain. The mixer can also be installed "dry", while the tank is empty.

The pricing for the replacement mixer is based on a prompt return of the mixer being replaced. Failure to return the original mixer would result in additional charges for the replacement mixer.

A detailed scope of work and firm price for the complete system is listed in Section 1 of this Proposal. Section 3 includes our standard Terms and Conditions. All pricing is based on the scope of work described in Section 1 and the Terms and Conditions in Section 3.

The PAX Water line of water mixers offers many advantages, including:

- Eliminates thermal stratification, short-circuiting and “dead zones”
- Eliminates chemical stratification and residual loss
- Lowers surface water temperature and combats biofilm growth
- Reduces variability in water taste and odor
- Reduces nitrification risk in chloraminated water systems
- Lowers rate of disinfection by-product (DBP) formation
- Delivered and installed quickly, with minimal construction and installation cost
- Proven track record supported by years of successful operational experience

This proposal is subject to G3 Engineering Standard Terms and Conditions.  
Pricing is valid for 60 days. **Please issue Purchase Order to G3 Engineering.**

If you have any questions, or need additional information, please contact me.

Sincerely,

Mike Burns  
G3 Engineering  
408 483 1899  
[mike@g3engineering.com](mailto:mike@g3engineering.com)



**A. SCOPE OF SUPPLY BY PAX WATER**

The following equipment and services comprise our scope of supply and work. All pricing in USD.

<u>No</u>	<u>Item Description</u>	<u>Price</u>
1.	Qty (1), PWM400 V3 Mixer System, Part # PSK-1242, including: <ul style="list-style-type: none"> <li>▪ Stainless steel 316 impeller designed to mix up to 9 million gallons of water</li> <li>▪ Passivated to minimize corrosion</li> <li>▪ The ability to function continuously regardless of tank cycles</li> <li>▪ 230V three-phase, 1 horsepower water-cooled motor</li> <li>▪ PAX Control Center, NEMA 3R, Powder Coated, 115VAC input, 3-Phase power to PWM output, Part # PSK-1254</li> </ul>	\$13,446.00
	Accessories: <ul style="list-style-type: none"> <li>▪ Power Cord, 130', Part # PSK-1127</li> <li>▪ Tripod, Knurl Knob, Part # PSK-1098</li> </ul>	755.00 1,610.00
	FOB Factory, Richmond CA with Full Freight Allowed to and from Jobsite	400.00
	Optional: <ul style="list-style-type: none"> <li>▪ Long Bail Handle and additional 50' chain, Part # PSK-0007 The Long Bail Handle and Chain kit allows for a wet installation and easy retrieval of the mixer from the tank, without a diver or draining the tank</li> </ul>	1,078.00
2.	<b>System Startup*</b> by a PAX Factory Authorized Technician ( <i>optional</i> )	1,000.00
	<i>*Discounted – local customer</i>	
	<b>Total including shipping, options and system startup by PAX</b>	<b>\$18,289.00</b>
	<b>Total not including system startup by PAX</b>	<b>\$17,289.00</b>

**B. SCOPE OF WORK BY OTHERS**

1. Equipment unloading and installation.
2. All civil works and concrete pad for equipment.
3. Any underground or structural work.
4. Anchor bolts and seismic restraints.
5. Heat tracing and insulation of all interconnecting equipment.
6. Room ventilation, air conditioning or lighting.
7. Any video recording.
8. Electrical power to control panel.
9. Any electrical conduit runs.
10. Any tank recoating services, labor, or parts.
11. Any tank hatch penetrations.

**Please issue purchase order to  
G3 Engineering**



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12. All electrical conduit, wiring, electrical material, etc. between control panel, SCADA, etc.
13. All taxes, fees, lien waivers, bonds and licenses.
14. Any permitting or regulatory approvals.
15. Any items not explicitly listed under Scope of Work by PAX Water above.

**REPLACEMENT MIXER QUOTE**

**PAX PWM400 V3 MIXING SYSTEM  
for  
Yuba City CA – 3.6MG Sanborn Tank 1**



*PAX SERIES400 MIXER*

**PAX Water Technologies, Inc.**  
Prepared on: September 6, 2018  
PAX case quote # 3736



**PAX** *Water Technologies*  
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## TABLE OF CONTENTS

Cover Letter	
Section 1:	Scope of Supply
Section 2:	Proposal Acceptance
Section 3:	Terms and Conditions

**IMPORTANT NOTICE:** All the information in this Proposal or supplied in connection with this Proposal (including drawings, designs and specifications) (collectively, the "Information") is confidential and has been prepared for Buyer's use solely in considering the purchase of the goods and services described. Transmission of all or any part of this Proposal to others or use by Buyer for other purposes is unauthorized without Seller's advance written consent.



**PAX** *Water Technologies*  
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**SECTION 1**

**SCOPE OF SUPPLY  
PAX PWM400 V3 MIXER**

- A. Scope of Work by PAX Water
- B. Scope of Work by Others
- C. Clarifications
- D. Terms of Payment/Price Validity
- E. Delivery
- F. Warranty





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## **C. CLARIFICATIONS**

1. Installation inspection, start-up and operator training can be provided by a PAX Water representative for a mutually agreed fee if they are not included in PAX's Water Scope of Work above. Whether or not PAX Water is providing start-up services, PAX Water will provide a start-up checklist.
2. If transaction is tax-exempt, please submit Tax Exemption Certificate to PAX Water.
3. PAX Water requires a minimum of two (2) weeks notification prior to performing onsite installation inspection, system start-up and training. PAX Water will work with you to attempt to accommodate your scheduling needs. Contact the Service Department at 866.729.6493 to schedule the onsite visit.
4. Once the on-site service has been scheduled, PAX Water requires a minimum of one (1) week notification in the event of a delay. Notice of delay received less than one (1) week prior to a scheduled site visit may result in a change fee.

## **D. TERMS OF PAYMENT/PRICE VALIDITY**

- Payment terms are 100% net 30 days after shipment of equipment.
- Price valid for 90 days. PAX Water may reprice this Proposal thereafter or if delivery occurs more than 365 days after PAX receives a mutually agreed order.

## **E. DELIVERY**

- Equipment Shipment: 2 weeks after arrival of order

## **F. WARRANTY**

- PAX Water will warrant the equipment as set forth in its standard warranty included in the Terms and Conditions at Section 3 of this Proposal. The Warranty Period (as defined therein) for the PAX Water PWM 400 V3 mixer is 24 months.



### SECTION 3

#### **TERMS AND CONDITIONS**

1. **Applicable Terms.** These terms govern Seller's sale, and Buyer's purchase, of the products and/or services referred to in Seller's proposal or quotation (collectively, the "Products"). The front page of Buyer's purchase order (disregarding any reference to terms and conditions and any provisions that conflict herewith), if any, together with the description of the Products in Seller's proposal or quotation and these terms and conditions comprise the complete and exclusive agreement between the parties (the "Agreement") related to the purchase and sale of the Products. All prior communications, documents, negotiations and representations, if any, are merged herein. Whether these terms are included in an offer or an acceptance by Seller, such offer or acceptance is conditioned on Buyer's assent to these terms. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or any other written or oral communication from Buyer shall not be binding in any way on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All orders are subject to prior credit approval by Seller.

2. **Pricing.** The prices shall be: (a) as stated in Seller's proposal or order acknowledgment, or (b) if none are stated, Seller's standard prices in effect at the time of release for shipment.

3. **Payment.** Unless otherwise stated, all payments shall be net 30 days from invoice date payable in United States Dollars. If Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller will become immediately due and payable without notice or demand. Buyer will pay 1½% interest per month, compounded monthly, on all amounts not received by the due date. Buyer hereby grants Seller a purchase money security interest in the Products until such time as Seller is fully paid. Buyer will assist Seller in taking action to perfect and protect Seller's security interest. Seller may make partial shipments, in which case, Buyer shall pay for each shipment in accordance with the terms hereof.

4. **Taxes, Shipping, Packing.** Except to the extent expressly stated otherwise in these terms or in Seller's proposal or quotation, prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges, and Buyer shall pay such amounts or reimburse Seller for any such amounts Seller pays. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend and hold Seller harmless from any taxes, costs, and penalties arising out of same. Prices include the costs of Seller's standard domestic packing only. Any deviation from standard packing (domestic or export) shall result in extra charges. Any and all increases, changes, adjustments, or surcharges (including fuel surcharges) which may arise in connection with the freight charges, rates or classification included as part of this Agreement, shall be for the Buyer's account.

5. **Delivery.** Products shall be delivered F.O.B. Seller's point of shipment or Ex Works Seller's point of shipment if being delivered outside the United States. All delivery dates are estimated and are dependent in part upon prompt receipt of all necessary information from Buyer, including submittal approvals, if applicable, and all required commercial documentation. Seller will make a good faith effort to complete delivery of the Products on the date and to the location specified in writing by Buyer, but Seller assumes no liability for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the Products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or representatives, storage and all other additional costs and risks will be borne solely by Buyer. Any claims for Products damaged or lost in transit ("Transit Losses") must be made by Buyer to the carrier and reported to Seller within one business day following delivery to Buyer.

6. **Inspection and Acceptance.** Buyer will have seven days from the date Buyer receives any Products to inspect such Products for defects and nonconformance which are not due to Transit Losses, and to notify Seller, in writing, of any defects, nonconformance or rejection of such Products. After such seven-day



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period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After such acceptance, Buyer will have no right to reject or revoke acceptance of the Products for any reason.

7. Returns and Cancellation. Buyer may not return custom engineered Products. Buyer may return other Products only with Seller's prior written approval, which may be withheld in Seller's sole discretion. Any authorized return will be subject to payment of a restocking charge and will be allowed only if the subject Product: (i) is in new condition, suitable for resale, and (ii) has not been used, installed, modified, altered or damaged. The restocking charge for authorized returns will be no less than (x) 25% of the purchase price, net of any freight charges included in the purchase price, plus (y) 100% of freight costs incurred by Seller. Buyer is responsible for the payment or reimbursement of return freight charges. Returns will be shipped F.O.B. Seller's location. Seller may, but will not be obligated to, treat any cancellation of an accepted order as an authorized return.

8. Force Majeure. Seller will have no liability for any breach caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government, or any other cause beyond Seller's reasonable control.

9. Warranty. Seller warrants for the Warranty Period (as defined below) that each Product is free from defects in material and workmanship and conforms to Seller's specifications applicable to the Product. Seller's warranty is transferable during the Warranty Period to the initial end-user of the Product ("Owner"). Seller's warranty is conditioned on (i) Seller's verification of the alleged breach; (ii) the Product being stored, handled, installed, operated and maintained in accordance with Seller's instructions, (iii) no repairs, modifications or alterations being made to the Product other than by Seller or its authorized representatives, (iv) Buyer or Owner providing prompt written notice of any warranty claims within the Warranty Period, and (v) at Seller's discretion, Buyer or Owner either removing and shipping the Product or non-conforming part thereof to Seller, at Buyer's or Owner's expense, or Buyer or Owner granting Seller access to the Products at all reasonable times and locations to assess the warranty claims. Seller's warranty does not apply to software and does not cover damage due to (x) lightning, flood or other acts of nature or *force majeure* events, or failure of or inappropriate application of peripheral devices, including lightning or surge protectors, (y) installation by a person or entity other than Seller or Seller's authorized installation contractor, or (z) ordinary wear and tear. Lightning protection is recommended particularly in areas historically prone to lightning, and it is Buyer's or Owner's responsibility to properly select and install lightning protection in accordance with all applicable laws, codes and regulations.

Buyer's or Owner's sole remedy for any breach of Seller's warranty is limited to Seller's choice of repair or replacement of the Product, or non-conforming parts thereof F.O.B. jobsite, or refund of the purchase price for the subject Product or part. Seller reserves the right to provide new or reconditioned replacement Products or parts. The warranty on repaired or replaced Products or component parts is limited to the remainder of the original Warranty Period. The warranty includes labor to remove and reinstall repaired or replacement Products or components for a period of 120 days after shipment of the Product; provided that (a) the defective Product was originally installed, and the repaired or replacement Products will be installed, in accordance with Seller's guidelines in effect at the time of installation; and (b) labor of divers and labor required to drain the storage tank or reservoir is excluded. After such period, Buyer or Owner shall be responsible for (i) any labor required to remove or gain access to the Product so that Seller can assess the available remedies; and (ii) all costs of installation of repaired or replaced Products or component parts. If Seller determines that any alleged damage is not covered by this warranty, Seller will charge, and Buyer will pay, Seller's normal rates for any inspection or repair performed by Seller, and for any materials provided or used in connection therewith.

The "Warranty Period" applicable to each Product begins on the date of installation or three (3) months after shipment, whichever comes first, and continues for the period of time set forth below opposite the applicable Product.



# PAX Water Technologies

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Mixers	Warranty Duration
PWM 400 V3	24 months

THE WARRANTY SET FORTH IN THIS SECTION IS SELLER'S SOLE AND EXCLUSIVE WARRANTY AND SELLER'S WARRANTY IS SUBJECT TO SECTION 10 BELOW. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES REGARDING SERVICES RENDERED, IF ANY, OR ANY WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR USAGE OF TRADE.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE PRODUCTS WILL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO CONSTITUTE A COMPLETE ALLOCATION OF THE RISKS BETWEEN THE PARTIES, AND BUYER ACKNOWLEDGES THAT IT IS KNOWINGLY LIMITING THE REMEDIES THAT MIGHT OTHERWISE BE AVAILABLE TO BUYER. BECAUSE THIS AGREEMENT AND THE PRICE PAID REFLECT SUCH ALLOCATION, THE REMEDIES PROVIDED TO BUYER HEREUNDER WILL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE EVEN IF THEY OPERATE TO BAR RECOVERY FOR CERTAIN DAMAGES THAT BUYER MAY INCUR.

11. Remedies of Seller. Any of the following will constitute an event of default which will enable Seller, at its option and without liability to Buyer, to cancel any unexecuted portion of the order that is the subject of this Agreement and to exercise any other right or remedy expressed herein or otherwise available at law or in equity: (i) the failure of Buyer to make any payment required hereunder when due ("Payment Default") or to perform any other term or condition contained herein; (ii) the insolvency of Buyer or its failure to pay its debts as they mature, an assignment by Buyer for the benefit of its creditors, the appointment of a receiver for Buyer or for the materials covered by this Agreement, or the filing of any petition to adjudicate Buyer bankrupt; (iii) a failure by Buyer to provide adequate assurance of performance within ten days after a justified demand by Seller; or (iv) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. Seller's obligations under Section 9 hereof will be suspended during the pendency of any Payment Default. No such suspension will extend Seller's obligations under Section 9 beyond the Warranty Period provided therein. Seller's election of any remedy in the event of a default by Buyer will not preclude Seller from exercising any other remedy available to Seller hereunder or at law or in equity for the same or any other default. In the event it becomes necessary to incur any expense for collection of any overdue account, Seller's collection charges, including attorneys' fees and expenses, will be added to the balance due and Buyer will pay all such charges together with interest thereon from the date incurred in accordance with Section 3.

12. Equal Employment Opportunity. Seller is an equal opportunity employer. The parties shall, as applicable, abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), 41 CFR 60-741.5(a) and Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) (relating to the notice of employee rights under federal labor laws), and these laws and regulations are incorporated herein by reference.

13. Export Compliance. Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, export, transfer, assignment, disposal, and use of the Products provided under this Agreement, including any export license requirements. Buyer agrees that such Products shall not at any time directly or indirectly be used, exported, sold, transferred, assigned, or otherwise disposed of in a manner which will result in non-compliance with such export laws and regulations. It shall be a condition of the continuing performance by Seller of its obligations hereunder that compliance with such PAX Replacement Mixer Proposal - Yuba City CA 09062018



# PAX Water Technologies

A UGSI SOLUTIONS COMPANY

export laws and regulations be maintained at all times. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

14. Miscellaneous. No part of this Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. As used in this Agreement, "including" and its variants mean "including without limitation" and its variants. No course of dealing or performance, usage of trade, or failure to enforce any term will be used to modify the Agreement. Buyer acknowledges that it has not relied upon any letters of intent, agreements, promises, negotiations, statements or representations other than those expressly set forth in this Agreement and that no such extraneous document or other communication shall be of any force or effect. Buyer agrees and warrants that in entering into this Agreement, Buyer is relying solely upon the information contained in this Agreement and not in reliance upon any other information. If any of these terms is unenforceable, such term will be limited only to the extent necessary to make it enforceable, and all other terms will remain in full force and effect. Buyer may not assign this Agreement without Seller's prior written consent. This Agreement will be governed by the laws of the State of California without regard to its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded. Any bond issued by Seller in connection with the sale of the Products shall remain in effect for a maximum of two (2) years after acceptance of the Products, and the only warranty, guaranty or Product performance obligations covered thereby shall be those at Section 9 above. Buyer covenants to return any such bond to Seller upon the earlier to occur of (x) the expiration of the Warranty Period, and (y) the expiration of the aforesaid two-year period. All Product performance obligations of Seller are contingent on the conditions of and within the tank in which the Products are installed being as specified by Seller and will be considered satisfied and discharged upon successful completion of the initial Product performance testing. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY.