



MEMORANDUM

Date: March 3, 2020

To: James Makshanoff, City Manager

From: Robert DeLoach, Interim Water Resources Director

Subject: **APPROVE THE SOLE SOURCE REQUEST TO BE PRESENTED TO CITY COUNCIL FOR A PURCHASE AGREEMENT TO REPLACE TWO WATER TREATMENT PLANT ANALYZERS IN THE AMOUNT NOT-TO-EXCEED \$134,880.**

OVERVIEW

Recommendation – It is recommended that the City Manager approve the Sole Source request from Water Operations to be presented to City Council in support of the following actions:

- 1) Gain approval of a Sole Source purchase agreement with Applied Spectrometry Associates (ASA), Inc. for the purchase and installation of two ChemScan Process Analyzers, not-to-exceed \$134,880; and
- 2) Authorize the City Manager, or designee, to execute any agreements necessary to complete the purchase.

Fiscal Impact– The total fiscal impact for the proposed recommended action is \$134,880. A Capital Purchase Request for \$45,000 was approved and adopted as part of the Water Resources Department (WRD) FY 19/20 Operating budget to replace one ChemScan unit. The additional \$89,880 has been transferred from water contingency funds to complete the purchase. Funding is available within the FY 19/20 Water Operating Budget (571-8129-66180-00000). The total cost includes the equipment and on-site installation.


Authority – **City Code section 2-994** – Sole and Single Source Procurement, states that, a contract may be awarded as a sole or single source without competition upon review and verification, and determined to be in the City's best interest. As this purchase request exceeds the \$100,000 threshold, it shall be reviewed by the Procurement Officer, Finance Director, and the City Manager and approved by the City Council.

compliance constituents. If the City is out of compliance, imported water will need to be purchased at a much higher cost to ratepayers.

There would also be additional cost in training how to operate any different or non-standard analyzer, along with the City having to stock spare parts of various analyzers. Overall, the compounding effect of not keeping standardized equipment at the Water Treatment Facilities estimated to be in the tens of thousands of dollars per year.

Submitted by,

Concur,


Robert DeLoach Date
Interim Water Resources Director


Teresa Villa Date
Purchasing Manager

Funding availability,


Andrew Mowbray Date
Finance Director

That the Procurement Officer and Finance Director reviewed and approved the request for the City Manager to approve a Sole Source purchase agreement with Applied Spectrometry Associates (ASA), Inc. for the purchase and installation of two ChemScan Process Analyzers, not-to-exceed \$134,880; and, approve the Sole Source request to be presented to City Council.

Attachment(s): Attachment No. 1 – Chemscan Proposal Log 191218
Attachment No. 2 – Chemscan Proposal Log 191219
Attachment No. 3 – Pomona CA Sole Source Letter 09.19.2019

2020 MAR - 5 P 3:43
RECEIVED FINANCE DEPT



ChemScan® Process Analyzer

Proposal

ChemScan, Inc. (An In-Situ Brand), agrees to sell and deliver to the purchaser and the purchaser agrees to buy and accept from the company the ChemScan® products and services described in this proposal.

Log No.:
191218

Proposal Date:
1/06/2019

Project Name:
Pomona, CA Reservoir
ChemScan® Chloramination Analyzer
Free Ammonia, Nitrite, Monochloramine, Total Chlorine and Nitrate

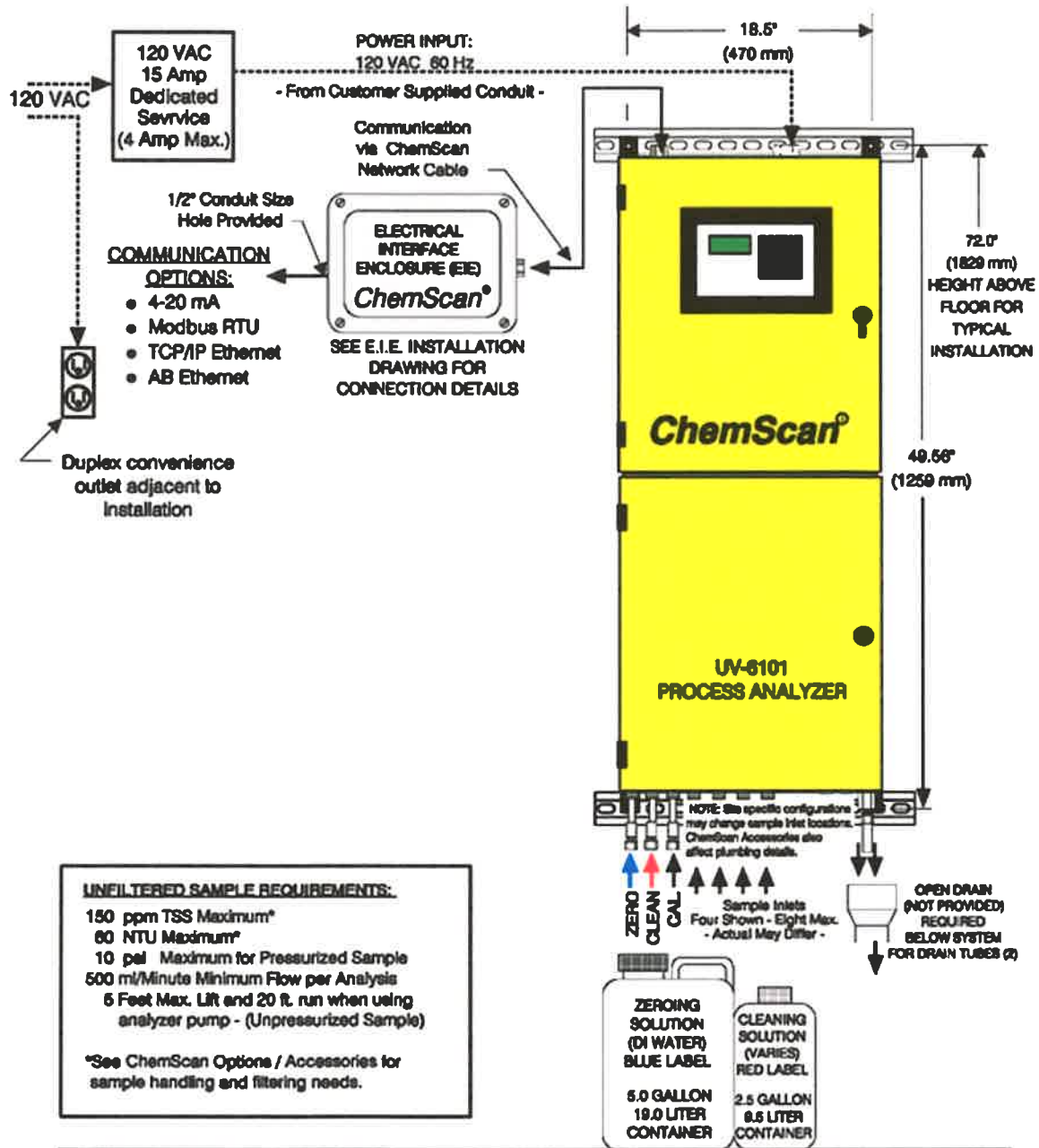
Bid Date:
TBD

Submit to: Jack Martinez
Water Treatment Plant Crew Chief
City of Pomona Water Resources
909.802.7427 ph.
909.973.8140 cell.
jack_martinez@ci.pomona.ca.us

ChemScan, Inc
Representative: Gabriel Zink
MISCO Southwest
Mobile: (949) 322-1551
Email: gzink@miscowater.com

Factory: ChemScan, Inc.
2325 Parklawn Drive
Waukesha, WI 53186
Phone: (262) 717-9500
Fax: (262) 717-9530

Contact: David G. Roskowic
Email david@chemscan.com
Phone (262) 825-3356



ChemScan®
UV-6101 Analyzer System Installation Diagram
- Front View, Wall Mount -

ASA, Inc.	PHONE: 288-717-6600
	FAX: 288-717-6630
Applied Spectrometry Associates, Inc. ©'08	
DATE: 12/01/08	64SYSWA

Free Ammonia (mg/l as N)
 Total Ammonia (mg/l as N)
 Monochloramine (mg/l as Cl₂)
 Total Chlorine (mg/l as Cl₂)

0.02 – 2.0 mg/l (Sample Line 4)
 0.02 – 2.0 mg/l (Sample Line 4)
 0.05 – 5.0 mg/l (Sample Line 4)
 0.05 – 5.0 mg/l (Sample Line 4)

Nitrate (mg/l as NO₃)0.10 - 50.0 mg/l (Sample Lines 1-3)

- Item 4 Initial supply of Chloramination reagents. (DI water and muriatic acid by others).
- Item 5 ChemScan Analyzer includes a Validation/Analysis Port. The Validation/Analysis Port provides the owner with manual analysis of grab sample(s) from any process location with water quality equivalent to the described duty and parameter(s) above.
- Item 6 Field Service - as follows:
Initial on-site calibration - 1 visit
Operation and Maintenance training – 1/2 day
Includes travel expenses from Waukesha, Wisconsin.
- Item 7 Freight to jobsite.

Notes:

1. Mount indoors or in sheltered location. No direct sunlight. Shelters or sunscreens are “by others” unless specifically offered above. Operating temperature range shall be 34°-140°F for sample liquid and 41°- 113°F ambient.
2. Sample pressure feed specification is 2.0 to 10.0 psi with flow of 0.5 to 5 l/min.
3. Pressure regulator by others.
4. Filter is required for any raw water sample or any sample with solids greater than 150 mg/l or turbidity higher than 60 NTU. (Internal sample tubing is ¼” minimum I.D.)
5. Contractor or System Integrator shall comply with Submittal and O&M Manual specification. ChemScan shall supply electronic copies of standard ChemScan Submittal and O&M Manuals ONLY. Any requirements outside standards may be satisfied for additional compensation. Example of Standard ChemScan Submittal and O&M Manual for similar Analyzer is available upon request.
6. Only equipment and services included in this proposal shall be supplied. Additional equipment and services are available for additional cost. Consult Factory for adders.
7. Installation, interconnecting wiring and plumbing by others.
8. ChemScan Analyzer shall be connected to SCADA by others.
9. DI water for zeroing and DI water and Muriatic Acid for cleaning shall be supplied by others.
10. NO mandatory maintenance or reagent contracts.

Exclusions:

The following items are not furnished under this proposal unless specifically listed in the product description: Installation labor; electrical connections and/or power wiring; connection to or interface with external data logging, recording, alarm, control or SCADA devices; sample lines; control algorithms for process equipment or systems; actuators or chemical feed systems for external processes or systems; or spare parts for ChemScan® instruments.

Price Policy:

The price quoted is based on a target delivery date of 60 days or less from receipt of an approved submittal package.

This date assumes that an acceptance of this offer or a valid purchase order will be furnished to ChemScan within 30 days of the date of this proposal, that ChemScan will furnish a submittal package for approval within 30 days following receipt of a valid order and that an approved submittal package and authorization to fabricate will be returned to ChemScan within 30 days after submission for approval.

If the order date or submittal approval date is later than the time period shown above, ChemScan reserves the right to adjust the price and/or delivery date for the items to be furnished under this proposal and any resulting agreement.

Submittals:

The submittal package will include the following items:

1. **Outline drawing of ChemScan® Process Analyzer system and accessories manufactured by ChemScan.**
2. **Top-level schematics and wiring diagrams showing ChemScan® power and data connections.**
3. **Installation instructions showing mounting and sample line connection details.**
4. **Equipment specifications for ChemScan® instruments and accessories.**
5. **Manufacturer's literature for ancillary items not manufactured by ChemScan but furnished with the ChemScan® system.**

Note: Operation and maintenance manual for ChemScan® instruments and accessories will be furnished during on-site operator training.

Start-Up:

Owner/Contractor should provide a minimum of two weeks' notice before start-up for chemical reagents shipment to plant site.

ChemScan will provide a start-up checklist in advance to be completed by Owner/Contractor after installation and returned with several photos.

ChemScan Service Associate will work with Owner/Contractor to schedule a start-up date to coincide with process stabilization.

Typical start-up scheduling lead time is 6-8 weeks.

Price per Analyzer: One (1) ChemScan® Model UV-6101, Items 1-7

Sell Price: \$64,280.00

Note: Sales tax is not included in this quotation.

Note: Provide Tax Exempt Certificate if applicable.

Terms of Payment: **20% upon presentation of submittal package for approval.**
(Municipal)

70% upon shipment of ChemScan® instrument and accessories.

10% upon startup, not to exceed 60 days from date of shipment.

NOTE: WARRANTIES SHALL APPLY ONLY IF PAYMENT IS MADE IN FULL AND IN CONFORMANCE TO THE ABOVE SCHEDULE.

Unless other terms are specified, all payments shall be in United States dollars, and pro rata payments shall become due as deliveries are made. If delivery is delayed by Purchaser, date of readiness for delivery shall be deemed to be date of delivery for payment purposes. If manufacture is delayed by Purchaser, a payment shall be made based on purchase price and percentage of completion, balance payable in accordance with the terms as stated.

If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Company's right to immediate payment, be increased by 1% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances of full or partial payment as a condition to commencing or continuing manufacture of in advance of shipment, or if shipment has been made recover the product(s) from the carrier.

Shipping Date: 45 days or less after authorization to proceed with fabrication - subject to price policy clause.

Delivery Terms: F.O.B., Waukesha, WI. Freight allowed in price quoted.

Validity: This proposal is valid for a period of 60 days or until the end of the calendar year, whichever comes first, from the date of the proposal shown above.

STANDARD CONDITIONS OF SALE**1. Terms**

Delivery to the transporting carrier shall constitute delivery to the Purchaser and title shall pass at that point, except that a security interest in the product(s) shall remain in ChemScan, Inc. (Company) regardless of mode of attachment to realty or other property, until the full price has been paid in cash. The Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Company's interest by adequately insuring the product(s) against loss or damage from any external cause with Company named as insured or co-insured.

Partial shipments may be made and proportionate payments shall become due and payable on partial shipments. Company shall select method of transportation and route. When delivery terms are FOB destination or freight allowed to destination, "destination" means common carrier terminal point (within the continental United States, excluding Alaska and Hawaii) nearest the final destination.

The target shipment date is subject to change due to delay on the part of the Purchaser in supplying the Company with necessary data or any changes therein at the Purchaser's instance, and to delays caused by fires, floods, strikes, accidents, civil or military authority, delays by suppliers of material and any other cause beyond the Company's reasonable control. Delay in delivery for any cause shall in no event subject the Company to any special or consequential damages.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the payment terms specified, Company may require satisfactory assurances of full or partial payment as a condition to commencing or continuing manufacture or payment in advance of shipment, or may, if shipment has been made, recover the product(s) from the carrier.

If payments are not made in conformance with the terms specified herein, the contract price shall, without prejudice to the Company's right to immediate payment, be increased by 1% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.

2. Warranty

The Company warrants the product(s) on date of delivery to Purchaser to be of the kind and quality described herein, merchantable, and free of defects in workmanship and material.

There are no warranties, express or implied, except the foregoing. The provisions in specifications hereto attached, if any, are descriptive. There is no warranty as to the performance of the product(s) except as may be set forth in a separate performance warranty attached to this proposal.

The foregoing warranties are expressly conditioned upon the ambient operating temperature at no time exceeding 120°F. If temperature at any time shall exceed 120°F, all warranties shall be null and void and the Company shall have no responsibility or liability with respect to the product(s).

The Company shall not be responsible for the deterioration of any kind of the product(s) to corrosion, erosion, or any other cause, regardless of when such deterioration occurs after leaving the Company's premises.

Any item of the product(s) which has not been manufactured by the Company shall be covered only by the express warranty of the manufacturer thereof.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS CONTRACT. THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR CLAIM IN TORT OR CONTRACT IS AS STATED HEREINAFTER.

IF PAYMENTS ARE NOT MADE ON TIME AND IN FULL, ALL WARRANTIES SHALL BE NULL AND VOID AND THE COMPANY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE PRODUCTS.

IF THE PRODUCT(S) ARE NOT INSTALLED, OPERATED AND MAINTAINED IN CONFORMANCE WITH THE COMPANY'S INSTRUCTIONS, ALL WARRANTIES SHALL BE NULL AND VOID AND THE COMPANY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE PRODUCTS.

If, within one year from the date of initial operation, but not more than 18 months from date of shipment by Company of any item of the product(s), Purchaser discovers that such item was not as warranted and that such defect interferes with the mechanical operation of the product(s), and promptly notifies the Company in writing thereof, the Company shall remedy such nonconformance (but only if the Company, in its sole judgment, determines that such item or product(s) was not as warranted and that such defect interferes with the mechanical operation of the item or product(s), and in the event of a dispute, the Company's decision shall be final) by, at Company's option, adjustment of the purchase price or furnishing or repairing, depending upon which alternative is most in accord with scientific or engineering principles, without charge, FOB origin, a similar part to replace any part of the product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies. The Company shall have the option of requiring the return of the product(s), transportation prepaid by purchaser, to establish the claim, or to make repairs or replace parts, or both. No allowance will be made for repairs or alterations unless made with the Company's consent or approval. Company will not be responsible for work done, apparatus furnished or repairs made by others, without prior authorization by the Company.

Replacement parts furnished by the Company shall be warranted as new parts are herein warranted. The same conditions and limitations with respect to the repair or replacement of such replacement item or product(s), as apply to new product(s), shall apply to such replacement parts. Company shall have the right of disposal of parts replaced by it.

Company's liability to Purchaser relating to the product(s), whether in contract or in tort, arising out of warranties, representations, instructions, installations, or defects from any cause, shall be limited exclusively to adjusting the purchase price or correcting the product(s) and under the conditions as aforesaid. The Company shall not be liable for any special or consequential damages resulting in any manner from the furnishing or use of the product(s), whether in connection with any erosive or corrosive gases or liquid or otherwise.

3. Patents

Company shall pay costs and damages finally awarded in any suit against Purchaser or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States patent (except infringement occurring as a result or incorporating a design or modification at Purchaser's request) provided that Purchaser promptly notifies Company of any charge of such infringement, and Company is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. This paragraph sets forth Company's exclusive liability with respects to patents.

4. Confidential Information and Improvements

Purchaser will keep confidential and will not use or reproduce any information received from Company in connection with the Proposal or the use, operation nor maintenance of the product(s) except with the written consent of Company. Purchaser will not copy or otherwise reproduce any written or printed material or drawings furnished to Purchaser by Company in connection with the product(s). Purchaser will return all such material to Company if the Proposal is not accepted. Purchaser will not copy the product(s) or make any design drawings of the product(s) and will not permit others to copy or make design drawings of the product(s). Company shall have a royalty-free license to make, use and sell, any changes or improvements in the product(s) invented or suggested by Purchaser or its employees.

5. General

Company shall not in any event be liable for indirect, special, incidental, or consequential damages, or penalties, nor does it assume any liability of Purchaser or others for injury to persons or property.

The laws of the State of Wisconsin shall govern the validity, interpretation and enforcement of this contract.

This document and the other document specifically referred to as being a part thereof, constitute the entire contract on the subject matter, and it shall not be modified except in writing signed by both parties. Assignment may be made only with written consent to the other party.

Unused spare or replacement parts may be returned FOB factory for credit less a 25% handling and restocking charge. Order cancellation fee is 25% of total order value.

OFFER

The foregoing is hereby offered.

ChemScan® Process Analyzers
ChemScan, Inc.
2325 Parklawn Drive
Waukesha, WI 53186

By: David G. Roskowic

Date: 19 December 2019

ACCEPTANCE

The foregoing proposal is hereby accepted.

By:

Date:



ChemScan® Process Analyzer

Proposal

ChemScan, Inc. (An In-Situ Brand), agrees to sell and deliver to the purchaser and the purchaser agrees to buy and accept from the company the ChemScan® products and services described in this proposal.

Log No.:
191219

Proposal Date:
1/06/2019

Project Name:
Pomona, CA Reservoir
ChemScan® Chloramination Analyzer
Free Ammonia, Nitrite, Monochloramine, Total Chlorine and Nitrate – One Sample Line

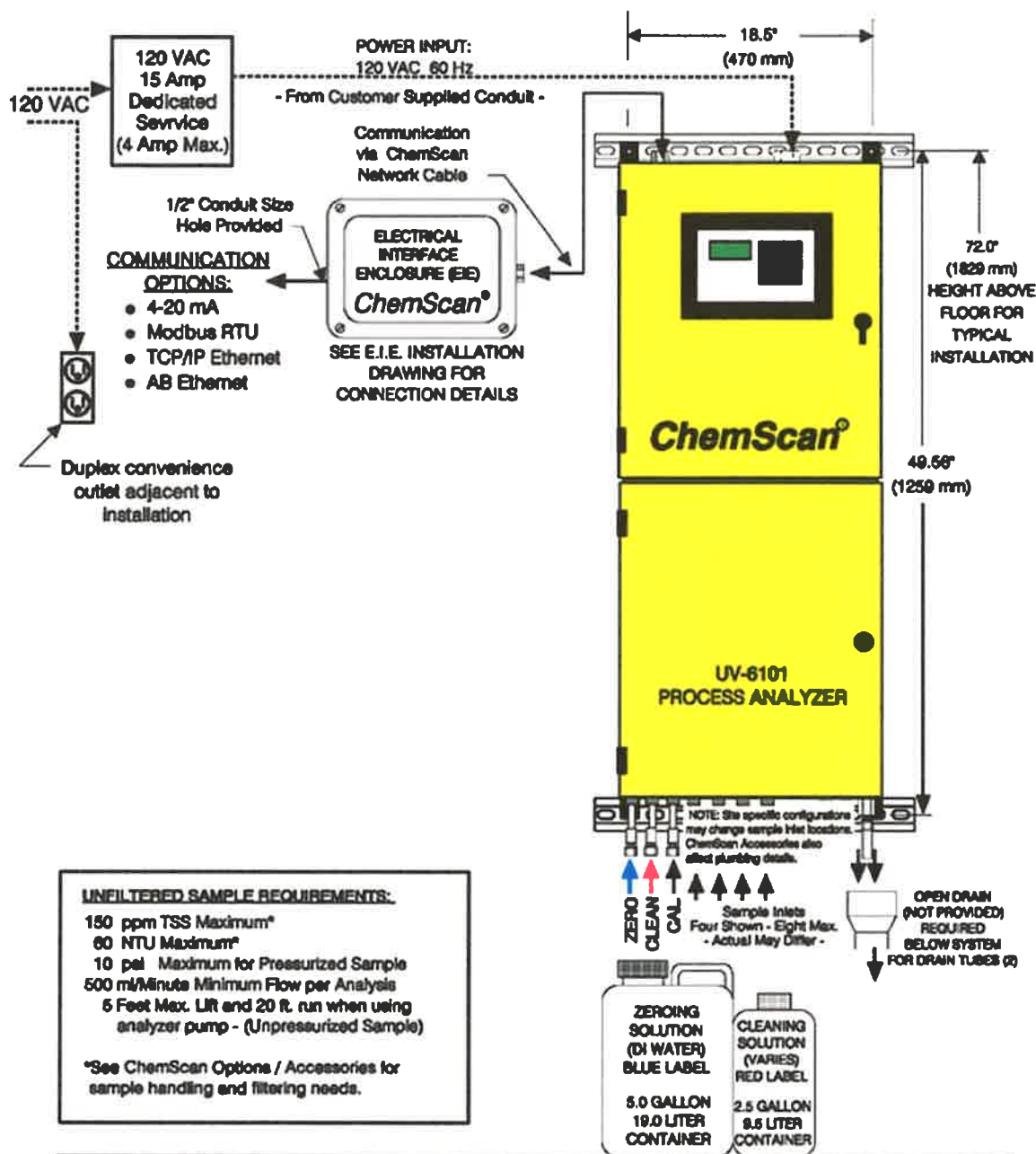
Bid Date:
TBD

Submit to: Jack Martinez
Water Treatment Plant Crew Chief
City of Pomona Water Resources
909.802.7427 ph.
909.973.8140 cell.
jack_martinez@ci.pomona.ca.us

**ChemScan, Inc
Representative:** Gabriel Zink
MISCO Southwest
Mobile: (949) 322-1551
Email: gzink@miscowater.com

Factory: ChemScan, Inc.
2325 Parklawn Drive
Waukesha, WI 53186
Phone: (262) 717-9500
Fax: (262) 717-9530

Contact: David G. Roskowic
Email david@chemscan.com
Phone (262) 825-3356



ChemScan®
UV-6101 Analyzer System Installation Diagram
- Front View, Wall Mount -

ASA, Inc.	PHONE: 288-717-6600
	FAX: 288-717-6630
Applied Spectrometry Associates, Inc. ©'08	
DATE: 12/01/08	64SYSWA

Free Ammonia (mg/l as N)	0.02 – 2.0 mg/l
Total Ammonia (mg/l as N)	0.02 – 2.0 mg/l
Monochloramine (mg/l as Cl ₂)	0.05 – 5.0 mg/l
Total Chlorine (mg/l as Cl ₂)	0.05 – 5.0 mg/l

Nitrate (mg/l as NO₃)0.10 - 60.0 mg/l

- Item 4 Initial supply of Chloramination reagents. (DI water and muriatic acid by others).
- Item 5 ChemScan Analyzer includes a Validation/Analysis Port. The Validation/Analysis Port provides the owner with manual analysis of grab sample(s) from any process location with water quality equivalent to the described duty and parameter(s) above.
- Item 6 Field Service - as follows:
Initial on-site calibration - 1 visit
Operation and Maintenance training – 1/2 day
Includes travel expenses from Waukesha, Wisconsin.
- Item 7 Freight to jobsite.

Notes:

1. Mount indoors or in sheltered location. No direct sunlight. Shelters or sunscreens are “by others” unless specifically offered above. Operating temperature range shall be 34°-140°F for sample liquid and 41°- 113°F ambient.
2. Sample pressure feed specification is 2.0 to 10.0 psi with flow of 0.5 to 5 l/min.
3. Pressure regulator by others.
4. Filter is required for any raw water sample or any sample with solids greater than 150 mg/l or turbidity higher than 60 NTU. (Internal sample tubing is ¼” minimum I.D.)
5. Contractor or System Integrator shall comply with Submittal and O&M Manual specification. ChemScan shall supply electronic copies of standard ChemScan Submittal and O&M Manuals ONLY. Any requirements outside standards may be satisfied for additional compensation. Example of Standard ChemScan Submittal and O&M Manual for similar Analyzer is available upon request.
6. Only equipment and services included in this proposal shall be supplied. Additional equipment and services are available for additional cost. Consult Factory for adders.
7. Installation, interconnecting wiring and plumbing by others.
8. ChemScan Analyzer shall be connected to SCADA by others.
9. DI water for zeroing and DI water and Muriatic Acid for cleaning shall be supplied by others.
10. NO mandatory maintenance or reagent contracts.

Exclusions:

The following items are not furnished under this proposal unless specifically listed in the product description: Installation labor; electrical connections and/or power wiring; connection to or interface with external data logging, recording, alarm, control or SCADA devices; sample lines; control algorithms for process equipment or systems; actuators or chemical feed systems for external processes or systems; or spare parts for ChemScan® instruments.

Price Policy:

The price quoted is based on a target delivery date of 60 days or less from receipt of an approved submittal package.

This date assumes that an acceptance of this offer or a valid purchase order will be furnished to ChemScan within 30 days of the date of this proposal, that ChemScan will furnish a submittal package for approval within 30 days following receipt of a valid order and that an approved submittal package and authorization to fabricate will be returned to ChemScan within 30 days after submission for approval.

If the order date or submittal approval date is later than the time period shown above, ChemScan reserves the right to adjust the price and/or delivery date for the items to be furnished under this proposal and any resulting agreement.

Submittals:

The submittal package will include the following items:

- 1. Outline drawing of ChemScan® Process Analyzer system and accessories manufactured by ChemScan.**
- 2. Top-level schematics and wiring diagrams showing ChemScan® power and data connections.**
- 3. Installation instructions showing mounting and sample line connection details.**
- 4. Equipment specifications for ChemScan® instruments and accessories.**
- 5. Manufacturer's literature for ancillary items not manufactured by ChemScan but furnished with the ChemScan® system.**

Note: Operation and maintenance manual for ChemScan® instruments and accessories will be furnished during on-site operator training.

Start-Up:

Owner/Contractor should provide a minimum of two weeks' notice before start-up for chemical reagents shipment to plant site.

ChemScan will provide a start-up checklist in advance to be completed by Owner/Contractor after installation and returned with several photos.

ChemScan Service Associate will work with Owner/Contractor to schedule a start-up date to coincide with process stabilization.

Typical start-up scheduling lead time is 6-8 weeks.

Price per Analyzer: One (1) ChemScan® Model UV-6101, Items 1-7

Sell Price: \$58,060.00

Note: Sales tax is not included in this quotation.

Note: Provide Tax Exempt Certificate if applicable.

Terms of Payment: **20% upon presentation of submittal package for approval.**
(Municipal)

70% upon shipment of ChemScan® instrument and accessories.

10% upon startup, not to exceed 60 days from date of shipment.

NOTE: WARRANTIES SHALL APPLY ONLY IF PAYMENT IS MADE IN FULL AND IN CONFORMANCE TO THE ABOVE SCHEDULE.

Unless other terms are specified, all payments shall be in United States dollars, and pro rata payments shall become due as deliveries are made. If delivery is delayed by Purchaser, date of readiness for delivery shall be deemed to be date of delivery for payment purposes. If manufacture is delayed by Purchaser, a payment shall be made based on purchase price and percentage of completion, balance payable in accordance with the terms as stated.

If payments are not made in conformance with the terms stated herein, the contract price shall, without prejudice to Company's right to immediate payment, be increased by 1% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the terms specified, Company may require satisfactory assurances of full or partial payment as a condition to commencing or continuing manufacture of in advance of shipment, or if shipment has been made recover the product(s) from the carrier.

Shipping Date: 45 days or less after authorization to proceed with fabrication - subject to price policy clause.

Delivery Terms: F.O.B., Waukesha, WI. Freight allowed in price quoted.

Validity: This proposal is valid for a period of 60 days or until the end of the calendar year, whichever comes first, from the date of the proposal shown above.

STANDARD CONDITIONS OF SALE**1. Terms**

Delivery to the transporting carrier shall constitute delivery to the Purchaser and title shall pass at that point, except that a security interest in the product(s) shall remain in ChemScan, Inc. (Company) regardless of mode of attachment to realty or other property, until the full price has been paid in cash. The Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Company's interest by adequately insuring the product(s) against loss or damage from any external cause with Company named as insured or co-insured.

Partial shipments may be made and proportionate payments shall become due and payable on partial shipments. Company shall select method of transportation and route. When delivery terms are FOB destination or freight allowed to destination, "destination" means common carrier terminal point (within the continental United States, excluding Alaska and Hawaii) nearest the final destination.

The target shipment date is subject to change due to delay on the part of the Purchaser in supplying the Company with necessary data or any changes therein at the Purchaser's instance, and to delays caused by fires, floods, strikes, accidents, civil or military authority, delays by suppliers of material and any other cause beyond the Company's reasonable control. Delay in delivery for any cause shall in no event subject the Company to any special or consequential damages.

If at any time in Company's judgment Purchaser may be or may become unable or unwilling to meet the payment terms specified, Company may require satisfactory assurances of full or partial payment as a condition to commencing or continuing manufacture or payment in advance of shipment, or may, if shipment has been made, recover the product(s) from the carrier.

If payments are not made in conformance with the terms specified herein, the contract price shall, without prejudice to the Company's right to immediate payment, be increased by 1% per month on the unpaid balance, but not to exceed the maximum amount permitted by law.

2. Warranty

The Company warrants the product(s) on date of delivery to Purchaser to be of the kind and quality described herein, merchantable, and free of defects in workmanship and material.

There are no warranties, express or implied, except the foregoing. The provisions in specifications hereto attached, if any, are descriptive. There is no warranty as to the performance of the product(s) except as may be set forth in a separate performance warranty attached to this proposal.

The foregoing warranties are expressly conditioned upon the ambient operating temperature at no time exceeding 120°F. If temperature at any time shall exceed 120°F, all warranties shall be null and void and the Company shall have no responsibility or liability with respect to the product(s).

The Company shall not be responsible for the deterioration of any kind of the product(s) to corrosion, erosion, or any other cause, regardless of when such deterioration occurs after leaving the Company's premises.

Any item of the product(s) which has not been manufactured by the Company shall be covered only by the express warranty of the manufacturer thereof.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS CONTRACT. THE EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR CLAIM IN TORT OR CONTRACT IS AS STATED HEREINAFTER.

IF PAYMENTS ARE NOT MADE ON TIME AND IN FULL, ALL WARRANTIES SHALL BE NULL AND VOID AND THE COMPANY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE PRODUCTS.

IF THE PRODUCT(S) ARE NOT INSTALLED, OPERATED AND MAINTAINED IN CONFORMANCE WITH THE COMPANY'S INSTRUCTIONS, ALL WARRANTIES SHALL BE NULL AND VOID AND THE COMPANY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE PRODUCTS.

If, within one year from the date of initial operation, but not more than 18 months from date of shipment by Company of any item of the product(s), Purchaser discovers that such item was not as warranted and that such defect interferes with the mechanical operation of the product(s), and promptly notifies the Company in writing thereof, the Company shall remedy such nonconformance (but only if the Company, in its sole judgment, determines that such item or product(s) was not as warranted and that such defect interferes with the mechanical operation of the item or product(s), and in the event of a dispute, the Company's decision shall be final) by, at Company's option, adjustment of the purchase price or furnishing or repairing, depending upon which alternative is most in accord with scientific or engineering principles, without charge, FOB origin, a similar part to replace any part of the product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies. The Company shall have the option of requiring the return of the product(s), transportation prepaid by purchaser, to establish the claim, or to make repairs or replace parts, or both. No allowance will be made for repairs or alterations unless made with the Company's consent or approval. Company will not be responsible for work done, apparatus furnished or repairs made by others, without prior authorization by the Company.

Replacement parts furnished by the Company shall be warranted as new parts are herein warranted. The same conditions and limitations with respect to the repair or replacement of such replacement item or product(s), as apply to new product(s), shall apply to such replacement parts. Company shall have the right of disposal of parts replaced by it.

Company's liability to Purchaser relating to the product(s), whether in contract or in tort, arising out of warranties, representations, instructions, installations, or defects from any cause, shall be limited exclusively to adjusting the purchase price or correcting the product(s) and under the conditions as aforesaid. The Company shall not be liable for any special or consequential damages resulting in any manner from the furnishing or use of the product(s), whether in connection with any erosive or corrosive gases or liquid or otherwise.

3. Patents

Company shall pay costs and damages finally awarded in any suit against Purchaser or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States patent (except infringement occurring as a result or incorporating a design or modification at Purchaser's request) provided that Purchaser promptly notifies Company of any charge of such infringement, and Company is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. This paragraph sets forth Company's exclusive liability with respects to patents.

4. Confidential Information and Improvements

Purchaser will keep confidential and will not use or reproduce any information received from Company in connection with the Proposal or the use, operation nor maintenance of the product(s) except with the written consent of Company. Purchaser will not copy or otherwise reproduce any written or printed material or drawings furnished to Purchaser by Company in connection with the product(s). Purchaser will return all such material to Company if the Proposal is not accepted. Purchaser will not copy the product(s) or make any design drawings of the product(s) and will not permit others to copy or make design drawings of the product(s). Company shall have a royalty-free license to make, use and sell, any changes or improvements in the product(s) invented or suggested by Purchaser or its employees.

5. General

Company shall not in any event be liable for indirect, special, incidental, or consequential damages, or penalties, nor does it assume any liability of Purchaser or others for injury to persons or property.

The laws of the State of Wisconsin shall govern the validity, interpretation and enforcement of this contract.

This document and the other document specifically referred to as being a part thereof, constitute the entire contract on the subject matter, and it shall not be modified except in writing signed by both parties. Assignment may be made only with written consent to the other party.

Unused spare or replacement parts may be returned FOB factory for credit less a 25% handling and restocking charge. Order cancellation fee is 25% of total order value.

OFFER

The foregoing is hereby offered.

ChemScan® Process Analyzers
ChemScan, Inc.
2325 Parklawn Drive
Waukesha, WI 53186

By: David G. Roskowic

Date: 19 December 2019

ACCEPTANCE

The foregoing proposal is hereby accepted.

By:

Date: