

PROPOSAL

TOOELE COUNTY CORPORATION
 CONTRACT # 23-02-09



Reference: 1858211
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt

Date: 1/18/2023

To:
Purchaser: DESERET PEAK COMPLEX AQUATIC
Billing Address: 2930 West Highway 112
 Tooele, UT 84074

First Shipment Address:
 DESERET PEAK COMPLEX AQUATIC
 2930 West Highway 112
 Tooele, UT 84074

Quantity	Item # <i>Click on item # to view cut sheet</i>	Item Description	GPM (Ea) <i>(If Applicable)</i>	Unit Price	Extended Amt
	WESTERN OPTION				
1.00	<u>STAR-005</u>	STAR BURST	305.00	\$24,782.00	\$24,782.00
1.00	<u>/FOCH-002</u>	FEATURE ORNAMENT-COWBOY HAT		\$1,925.00	\$1,925.00
1.00	<u>FOIG-001</u>	FEATURE ORNAMENT-IGUANA		\$3,460.00	\$3,460.00
1.00	<u>FOSN-001</u>	FEATURE ORNAMENT SNAKE		\$2,795.00	\$2,795.00
1.00	<u>/PAINT-1858211</u>	CUSTOM WOOD GRAIN PAINT		\$1,000.00	\$1,000.00
1.00	<u>WTR-002</u>	OLDE TOWN WATER TOWER	74.90	\$28,705.00	\$28,705.00
1.00	<u>/WBTB-001</u>	WOOD BEAM TBKT 2 BKT		\$17,490.00	\$17,490.00

Total Flow (Non Choreographed) - 379.90 GPM



Total Order	\$80,157.00
Freight to Tooele, UT	\$6,995.00
Taxes - See General Terms, Conditions and Warranty	\$0.00
Net Order	\$87,152.00

Inquire about our nationwide cooperative purchasing programs!

Payment Terms: 35% Dep, 65% prior shipment

Estimated Delivery Date upon placement of Order:

See the following pages for General Terms, Conditions and Warranty related to this Proposal

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Reference: 1858211
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt

Warranty Details Click Here

GENERAL TERMS AND CONDITIONS

- 1) **Purchase:** By executing this proposal (the "Proposal"), or submitting a purchase order pursuant to this Proposal (which shall incorporate the terms of this Proposal into such purchase order specifically by reference) which is accepted by Rain Drop Products, LLC ("Rain Drop") the purchaser identified above ("you" or the "Purchaser") agrees to purchase the products as detailed in this Proposal (the "Products"), or in the purchase order accepted by Rain Drop, for use by Purchaser or for installation by Purchaser on behalf of a third-party who will be the ultimate owner of the features and/or equipment (the ultimate owner of the features and/or equipment, whether Purchaser or a third-party, being the "Owner").
- 2) **Proposal:** The above proposal is valid for sixty days from the date first set forth above. After sixty days Rain Drop reserves the right to increase prices due to the rise in costs of raw material, fuel or other cost increases.
- 3) **Short Ship Claims:** Purchaser has fifteen days from receipt of the Products to file a short ship report in writing to its sales representative. Rain Drop will not honor claims made after this time.
- 4) **Standard Exclusions:** Unless specifically included and detailed in this Proposal, this Proposal does not include, and Rain Drop will not provide services, labor or materials for any of the following work: (a) removal or disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or replacement of any materials supplied by Purchaser or Owner; (d) repair of concealed underground utilities not located on prints, supplied to Rain Drop by Owner during the bidding process, or physically staked out by Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.
- 5) **Bonding Guidelines:** If Purchaser uses or provides the Products for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner: "The manufacturer's warranty for the Rain Drop Products brand water components is a separate document between Rain Drop Products, LLC and the ultimate owner of the Rain Drop brand water components, which will be provided to the ultimate owner at the time of final shipment for products manufactured by Rain Drop. Due to surety requirements, any performance and/or payment bond will cover only the first year of Rain Drop Products, LLC warranty."
- 6) **Insurance Requirements:** Rain Drop will not provide any insurance coverage in excess of its standard insurance, a copy of which is available for your review prior to acceptance of this Proposal.
- 7) **Payment:** Terms of payment are defined in the "Payment Terms" section of this Proposal and are specific to this contract. All payments must be made to Rain Drop Products, LLC, 2121 Cottage Street, Ashland, Ohio 44805. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, Rain Drop may cease continued

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Reference: 1858211
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt

manufacturing until such payments with penalties are made, or Rain Drop may be relieved of its obligations hereunder if payment is more than sixty days past due. Rain Drop shall be entitled to certain payments previously made as liquidated damages. Rain Drop may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt. All payments made pursuant to the installment payment process shall not be available to be recovered by Purchaser so long as Rain Drop Products is not in default under the agreement. Transactions over \$5,000 paid via credit card will be subject to a 3% surcharge.

8) **Taxes:** Unless otherwise specifically included and detailed in this Proposal, prices do not include any taxes, including sales, use or excise taxes. It is the Purchaser's responsibility to furnish evidence of any sales tax exemption in the appropriate states and have compliance documents, where applicable, on file at Rain Drop.

9) **Lien Releases:** Upon request by Owner, Rain Drop will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Rain Drop will provide a full release of liens upon receipt of final payment. In accordance with state laws, Rain Drop reserves the right to place a lien on the property if final payment has not been received ten days prior to the filing deadline for liens.

10) **Site-plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:** Site-plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this Proposal unless specifically detailed herein. Rain Drop does not in any way warrant or represent that a permit or site plan approval for construction will be obtained.

11) **Manufacturing & Delivery:** Manufacturing lead-time from Rain Drop's receipt of this Proposal executed by Purchaser, or submittal by Purchaser of a purchase order pursuant to this Proposal (which shall incorporate the terms of this Proposal specifically by reference) which is accepted by Rain Drop is approximately twelve (12) to sixteen (16) weeks depending on the size and complexity of the components ordered.

12) **Changes in the Work:** During the course of this project, Purchaser may order changes consisting of additions and deductions in the work. The cost of these changes will be determined by Rain Drop, and a change order form must be completed and signed by both Purchaser and Rain Drop, which will detail the scope of the change order. Should any change order be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Rain Drop will be deemed to have performed its part of the project, and the project will be terminated. Upon such termination, Rain Drop will submit a final billing to Purchaser for payment, less a labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of Purchaser.

13) **Restocking Fee** There will be a 30% restocking fee applied to all Products returned by Purchaser. Prior approval must be obtained from Rain Drop before any product is to be returned. All returns are at Rain Drop's discretion.

14) **Indemnification:** To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless Rain Drop and its consultants, agents and employees or any of them from and against claims, damages, losses and

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Reference: 1858211
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt

expenses, including but not limited to attorneys' fees, related to the installation of products manufactured and supplied by Rain Drop, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section..

15) **Intellectual Property Rights** Purchaser acknowledges and agrees that Rain Drop will remain the owner of any and all intellectual property rights, including, but not limited to, copyrights, service marks, and trademarks in, on or to the Products.

16) **Assembly/Installation:** Rain Drop does not provide installation services. If requested and specifically detailed in this Proposal, construction site services are intended to imply supervision and consulting services only. All labor required for the assembly, construction or removal of Products manufactured and supplied by Rain Drop will be the Purchaser's and/or Owner's responsibility.

17) **Site/Use Review by Purchaser:** Rain Drop relies on the Purchaser to determine that the Products are appropriate and safe for the Owner's installation site and/or intended use.

18) **Dispute Resolution:** Any controversy or claim arising out of or related to this Proposal must be settled by binding arbitration administered in Ashland, Ohio by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgment upon the award may be entered in any court having jurisdiction thereof.

19) **Entire Agreement; No Reliance:** This Proposal, if accepted by Purchaser, represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this Proposal are not part of this Proposal. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Rain Drop or its agents which are not expressly stipulated herein, including, without limitation any statements as to the Products, warranties provided hereunder.

20) **No Third-Party Beneficiaries:** This Proposal, if accepted by Purchaser, creates no third party rights or obligations between Rain Drop and any other person, including any Owner who is not also a purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this Proposal.

21) **Governing Law:** The Proposal will be construed and enforced in accordance with the laws of the State of Ohio. Notwithstanding any other law or venue available in any country or jurisdiction, the parties specifically reject all other venues and jurisdictions other than the United States of America, State of Ohio.

22) **Assignment:** Purchaser may not assign this Proposal, by operation of law or otherwise, without the prior written consent of Rain Drop. The Proposal, if accepted by Purchaser, shall be binding upon and inure to the benefit of Rain

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Drop and the Purchaser, and their successors and permitted assigns.

23) **Miscellaneous:** Rain Drop objects to the inclusion of any different or additional terms in Purchaser's acceptance of this Proposal and if such terms are included in Purchaser's acceptance, Purchaser agrees that a contract of sale will nevertheless result only on the original terms stated in this Proposal. If any portion of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, either of which may be deemed an original, but all of which shall constitute one and the same document. Each person executing this Agreement for and on behalf of Purchaser represents and warrants that that person has the authority to execute this Agreement and all corporate action necessary to authorize the execution delivery of this Agreement.

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Reference: 1858211
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt
Order Amount: \$ 87,152.00

Executed to be effective as of the date executed by the Company:

PURCHASER:

Signature: _____

By: (Print Name) _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Colin Winchester 02/15/2023

Colin R. Winchester
Deputy Tooele County Attorney

PROPOSAL



Reference: 1858221
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt

Date: 1/18/2023

To:
Purchaser: DESERET PEAK COMPLEX AQUATIC
Billing Address: 2930 West Highway 112
 Tooele, UT 84074

First Shipment Address:
 DESERET PEAK COMPLEX AQUATIC
 2930 West Highway 112
 Tooele, UT 84074

Quantity	Item # <i>Click on item # to view cut sheet</i>	Item Description	GPM (Ea) <i>(If Applicable)</i>	Unit Price	Extended Amt
1.00	RACING OPTION /RDSR-001	ROADSTER SLIDE-1950 XK MODEL-NON OMNI	25.40	\$35,575.00	\$35,575.00
1.00	<u>STAR-005</u>	STAR BURST	305.00	\$24,782.00	\$24,782.00
5.00	FLG-36X24-001	FLAG-CUSTOM FLAG 36"X24"		\$100.00	\$500.00
1.00	/TRSP-001	ELEVATED TIRE SPIN-NON OMNI	3.40	\$9,375.00	\$9,375.00

Total Flow (Non Choreographed) - 333.80 GPM



Total Order	\$70,232.00
Freight to Tooele, UT	\$4,975.00
Taxes - See General Terms, Conditions and Warranty	\$0.00
Net Order	\$75,207.00

Inquire about our nationwide cooperative purchasing programs!

Payment Terms: 35% Dep, 65% prior shipment

Estimated Delivery Date upon placement of Order:

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Warranty Details Click Here

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19) **Entire Agreement; No Reliance:** This Proposal, if accepted by Purchaser, represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this Proposal are not part of this Proposal. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Rain Drop or its agents which are not expressly stipulated herein, including, without limitation any statements as to the Products, warranties provided hereunder.

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22) **Assignment:** Purchaser may not assign this Proposal, by operation of law or otherwise, without the prior written consent of Rain Drop. The Proposal, if accepted by Purchaser, shall be binding upon and inure to the benefit of Rain

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PROPOSAL



Reference: 1858221
Project Name: DESERET UPGRADES
Salesperson: Jodi Holt
Order Amount: \$ 75,207.00

Executed to be effective as of the date executed by the Company:

PURCHASER:

Signature: James A. Welch
By: (Print Name) James A. Welch
Title: County Manager
Date: 2/23/2023

APPROVED AS TO FORM:

Colin R. Winchester 02/15/2023
Colin R. Winchester
Deputy Tooele County Attorney



op

nd, OH • 44805
e color and placement may vary



nd, OH • 44805
e, color and placement may vary

dp



Tooele County Council Agenda Item Summary

Department Making Request:

Parks and Recreation

Meeting Date:

Feb 21, 2023

*Contract***Mark Options That Apply:** **Grant**
1 time **Contract**
1 yr. or less **Purchase***Exp date: Dec 2023* **Grant**
With County Match **Contract**
More than 1 yr. **Other** _____*Exp date: _____***Budget Impact:** **In Budget** **Over Budget****Amount of Contract, Service, Grant:** \$ 100,000**Item Title:** Sole Source for Pool Toys*Please answer the who? what? when? why?*

Requesting a sole source contract for new Pool Toys at the Energy Solution Aquatics Center. Council has approved new toys for the aquatics center in 2023. Parks and Recreation is requesting using the same manufacturer of pool toys as was previously used at the pool. Using the same manufacturer will reduce costs and time of installation. Each toy and manufacturer has unique piping, bolt patterns, flow rates, and other items that are proprietary. Replacing a toy from one manufacturer to another manufacturer may result in replacing feed lines, tearing up concrete, replacing connection points, etc. The request for sole source is to mitigate most of those issues by using the same manufacturer expediting the process and reducing the cost.

List who needs copies when approved: