

## AGREEMENT FOR PURCHASE AND SALE OF GOODS

**THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement")** is made **this 18th day of February, 2004, by and between Ellis K. Phelps & Company, whose address is 5771 Country Lakes Drive, Ft. Myers, Florida 33905** ("Seller") and THE CITY OF NAPLES, a Florida municipal corporation, the address of which is 735 Eighth Street South, Naples, Florida 34102 ("Buyer"). In consideration of the mutual covenants and agreements hereinafter set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller agree as follows:

1. **Description of Goods; Sale and Delivery.** Seller shall sell, transfer, and deliver to Buyer Flygt submersible wastewater pumps, on an as-needed-basis, subject to such terms as are set forth in the Description/Proposal and in this Agreement.
2. **Acceptance; Purchase.** Buyer shall accept the goods and pay **an annual amount not-to-exceed \$150,000 thru September 30, 2006** for the goods in accordance with the terms of this Agreement.
3. **Identification of Goods.** Identification of the goods shall not be deemed to have been made until both Buyer and Seller have agreed that the goods in question are to be appropriate to the performance of this Agreement.
4. **Rate and Time of Payment.** Unless otherwise specified, Buyer shall make payment to Seller for the goods within 30 days after the goods are received by Buyer.
5. **Receipt of Goods.** The goods shall be deemed received by Buyer when delivered to Buyer at City of Naples, 270 Riverside Circle, Naples, Florida 34102. Delivery of the goods to Buyer shall occur on a business day and shall not occur after 3:15 p.m. on the delivery day.
6. **Risk of Loss.** The risk of loss from any casualty to the goods, regardless of the cause, shall be on Seller up to the time of receipt of the goods by Buyer at the place of delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk shall be on Buyer, including any goods thereafter returned to Seller until their receipt by Seller.
7. **Warranty Against Encumbrances.** Seller warrants that the goods are now free, and at the time of delivery shall be free, from any security interest or other lien or encumbrance.
8. **Warranty of Title.** Seller warrants that at the time of signing this Agreement, Seller neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Seller in the goods.
9. **Product Warranty.** Seller provides general warranties of fitness and general warranties that the goods are free from defects, for 1 year from acceptance of the goods, except as may otherwise be set forth in the Description/Proposal, or other attached warranty.
10. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery, and within 5 business days after delivery, Buyer must give notice to Seller of any claim for damages on account of the condition, quality, or grade of the goods, and Buyer must specify in detail the

basis of such claim. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by Buyer.

11. **Procedure as to Rejected Goods.** On receipt of notification of rejection, Seller will immediately arrange to receive back the goods for shipment and return. However, within 5 days, Seller may have an agent inspect such goods for nonconformity; otherwise, such inspection will be made on return to Seller's storage facility. When such goods are confirmed or acquiesced in as nonconforming, Seller will ship conforming goods within 30 days of the notice of rejection unless Buyer earlier notifies Seller to forgo such shipment.

12. **Governing Law.** The parties acknowledge that the transaction that is the subject matter of this Agreement bears a reasonable relation to the State of Florida and agree that the law of the State of Florida will govern their rights and duties. The parties specifically intend that the provisions of Article 2 of the Florida Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, and that all the definitions contained therein will be applicable to this Agreement except where this Agreement may expressly provide otherwise.

13. **Notices and Address of Record.** All notices required or made pursuant to this Agreement to be given by Seller to Buyer shall be in writing and shall be delivered by overnight courier, by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Buyer:

City of Naples  
Attention: Dr. Robert E. Lee, City Manager  
735 Eighth Street South  
Naples, Florida 34102-3796

All notices required or made pursuant to this Agreement to be given by Buyer to Seller shall be made in writing and shall be delivered by overnight courier, by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Seller:

Ellis K. Phelps & Company  
5771 Country Lakes Drive  
Ft. Myers, FL 33905  
Attention: Christopher Stewart

Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party who signature appears thereon and all of which shall together constitute one and the same instrument.

15. **Effective Date.** This Agreement shall take effect on the day of execution by the last party to execute this agreement, **and expire on September 30, 2006.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above.

ATTEST:

"SELLER":  
**Ellis K. Phelps & Company**

(Corporate Seal)

\_\_\_\_\_  
(Print Name: \_\_\_\_\_)

By: \_\_\_\_\_  
Authorized Representative

ATTEST:

"BUYER"

City of Naples, Florida

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

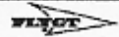
By: \_\_\_\_\_  
Dr. Robert E. Lee, City Manager

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

Agreement for Purchase and Sale of Goods  
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# Warranty



## General Information

Issued: 4/01

Supersedes: 6/94

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### ITT FLYGT 5 YEAR (10,000 HOUR) PUMP WARRANTY MUNICIPAL: PERMANENT INSTALLATIONS

For the period defined below, ITT FLYGT offers a Commercial Warranty to the original End Purchaser against defects in workmanship and material covering Parts and Labor on its pumps when used in permanent installations, in compliance with the requirements of the ITT FLYGT Catalog and Technical Manual specifications, for use in Sewage Collection Systems or for intermittent (40% duty cycle or less) pumping of Raw Sewage, Municipal Wastewater, Potable or Raw Water, Storm Water or similar, abrasive free non-corrosive liquids ("Qualified Liquids").

ITT FLYGT Pumps used with Qualified Liquids in Sewage Lift Stations are Warranted for 5 years. ITT FLYGT pumps used for Sewage Treatment Processing or for more continuous (41% duty cycle or more) pumping of Qualified Liquids are Warranted for 10,000 hours of operation. Warranty begins on the date of shipment from ITT FLYGT. ITT FLYGT will pay the following share of the cost of replacement parts and labor provided the Pump, with Cable attached, is returned prepaid to an Authorized ITT FLYGT Service Facility for repairs. Cutting Plates and Impellers for FP Pumps are not included in this warranty.

	<u>TIME AFTER SHIPMENT</u>		
Months:	0-18	19-39	40-60
Hours:	0-3000	3000-6500	6500-10,000
Warranty:	100%	50%	25%

Unless otherwise specified by ITT FLYGT Corporate Headquarters, time after shipment shall be determined from shipping date, to date of receipt of defective product (or Warranty Claim) by ITT FLYGT or any of ITT FLYGT's Authorized Service Facilities.

Start-up report and electrical System Schematics (including Bills of Material) will be required to support any Warranty Claims. This Warranty shall not apply to any Product or Part of Product which has been subjected to misuse, accident, negligence, used in a manner contrary to ITT FLYGT's printed instructions or damaged due to a defective power supply, improper electrical protection or faulty installation or repair. The 5 year (or 10,000 hour) Warranty applies to the following Accessories if originally purchased with the pumps: Discharge Connection, Access Cover, HDL Valve, Guide Bar Bracket(s) and Pump Power Cable(s).

**IMPORTANT:** For warranty purposes, Monitoring devices supplied with specific pumps for protection must be connected and utilized. Failure to do so will invalidate the warranty.

ITT FLYGT's sole obligation under this Warranty shall be to Repair, Replace or Grant a Credit Reimbursement at its discretion, through its Warranty Processing Procedures for defective products when returned prepaid to ITT FLYGT and upon ITT FLYGT's exclusive examination found to be defective. Products repaired or replaced under this warranty will be returned freight prepaid.

ITT FLYGT neither assumes, nor authorizes any person or company to assume for it, any other obligation in connection with the sale of its equipment. Any enlargement or modification of this Warranty by a Representative, or other Selling Agent shall become his exclusive responsibility.

ITT Flygt will not be held responsible for travel expenses, rented equipment, outside contractor's fees, unauthorized repair shop expenses, or for pumps purchased or used without ITT Flygt supplied cable or controls unless suitable for the purpose and equal to ITT Flygt cables or controls. The warranties made herein by ITT Flygt are in lieu of any and all other warranties, expressed or implied and the implied warranties of merchantability and fitness for a particular purpose are hereby expressly disclaimed. ITT Flygt assumes no liability for loss of use or for any direct, indirect or consequential damages of any kind in respect to the use or operation of ITT Flygt products, or any equipment or accessories in connection therewith.