

AGREEMENT FOR PURCHASE AND SALE OF GOODS

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **21st day of April, 2004**, by and between **R. C. Beach & Associates, Inc.**, whose address is **539 San Christopher, Dunedin, FL 34498** ("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 the goods described on the Description/Proposal attached hereto and made a part of as Exhibit "A" 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 the total sum to be an amount not-to-exceed **\$28,000.00** 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, 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:

R. C. Beach & Associates, Inc.
539 San Christopher
Dunedin, FL 34498
Attention: Carla Meier

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.

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

ATTEST:

"SELLER":

R.C. Beach & Associates, Inc.

(Corporate Seal)

By: _____
Authorized Representative

Witness

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

Mr. Ken Kemlage
January 28, 2004
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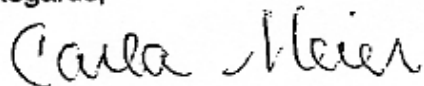
The cost for a new replacement pump which includes:

16x24.50 Fabricated Discharge Head
Cast Iron/Bronze Fitted Materials
(2) 16" Flanged Column, 5'
416 SS Shafting
Bronze Bearings
316 SS Bolting
Mechanical Seal
4-Piece Coupling
316 SS Basket Strainer
NSF 60 Epoxy Coating for Potable Water
Standard Paint

Price: \$28,000.00 (freight included)
Delivery: 10-12 weeks

Our standard terms are net 30 days after invoice. No Florida sales tax is included. Please call if you need additional information or have any questions.

Regards,



Carla Meier
R. C. Beach & Associates, Inc.
Representing
Ruhrpumpen, Inc.

cc: Skip Beach



DOMESTIC TERMS AND CONDITIONS

Definitions:

"Equipment" means all equipment (including materials and labor, incorporated therein) or operational spare parts or renewal parts or any other material (including tooling) or parts, or any combination thereof, furnished by Seller to Purchaser under the contract of purchase.

"Product" means any process, equipment, information, service, output or other thing of value which incorporates or results directly or indirectly from the Equipment or Services.

"Services" means work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Purchaser under the contract of purchase and include such activities as the installation, testing, alignment, startup, operation, repair and maintenance of the Equipment.

"Suppliers" means any of Seller's suppliers of material or services for the Equipment or Services, regardless of tier, including any engineering design review or services contracted for and performed by other companies.

Acceptance:

This quotation supersedes all previous quotations and agreements and is void unless accepted within fifteen days from date hereof unless otherwise stated and is subject to change upon notice.

Recommendations and quotations are made upon the basis of operating conditions specified by Purchaser. Should actual conditions be different than those specified and performance of the Equipment be adversely affected thereby or not adequate, Purchaser shall be responsible for the cost of all changes in the Equipment required to accommodate such conditions, and Seller reserves the right to cancel Purchaser's order and Seller shall be reimbursed for all costs and expenses incurred and reasonable profit for performance executed prior to the date of such termination.

All orders are subject to written acceptance by Seller's supplying plant.

When this quotation is accepted by Purchaser, all the terms and conditions contained herein become a part of the contract of purchase, unless otherwise stated in this quotation. Any contracting or additional terms and conditions contained in any order submitted by Purchaser shall be of no effect unless assented to in writing by Seller.

Delivery:

Delivery of the Equipment hereunder shall be made F.O.B. Seller's plant. Shipping dates are approximate and are based on prompt receipt of all necessary information at Seller's plant. In case of delay in furnishing complete information, dates of shipment may be extended for a reasonable time based on conditions at Seller's plant. Receipt of the Equipment by Purchaser shall constitute a waiver of all claims for delay.

Seller shall not be liable for delay in delivery due to causes beyond its reasonable control or due to acts of God, acts of Purchaser, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, riot, civil or military authority, freight embargoes, transportation shortages or delays, unfavorably adverse weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes, and in the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

Warranties:

A. Equipment

Seller warrants that the Equipment shall be free from defects in material, workmanship and fit.

Accessories supplied by Seller but manufactured by others carry whatever warranty the manufacturers of such accessories conveyed to Seller and which can be passed on to Purchaser.

Seller's obligations under this warranty shall expire one (1) year after shipment by Seller.

B. Services

Seller warrants that the Services shall be performed in accordance with industry practices.

Seller's obligations under this warranty shall expire one (1) year after the Services are performed except that Seller's warranty obligations for repair work shall expire ninety (90) days from date of initial startup or one (1) year after completion of repair work, whichever occurs first.

C. Conditions Applying to Warranties

1. This warranty for Equipment is conditioned upon the Equipment's being received, unloaded, stored, handled, installed, tested, maintained and operated in a proper manner.
2. Neither the warranty for Equipment nor the warranty for Services shall be applicable in the event that failure to meet such warranty is the result of sale or omission of persons (other than Seller or Seller's Suppliers in connection with the work performed by them hereunder), accidents, or alteration, abuse or misuse of the Equipment or alteration or omission of the Services.
3. Unless otherwise specifically agreed in writing, Seller's warranty of performance is based on shop tests at the specified rating, when handling clean, fresh, nonaerated water at a temperature not exceeding 85°F.
4. The conditions of any tests and the basis of any calculations in connection with the warranties for Equipment or Services shall be acceptable to Seller and Purchaser, and the tests may be witnessed by representatives of either. Measurement readings shall be based on plant instrumentation, if applicable, and actual readings shall be utilized. In the interest of Purchaser or Seller may, at its expense, provide temporary special test instruments. Purchaser and Seller reserve the right to inspect and calibrate any instruments to ensure accuracy of measurements, and such expense shall be borne by the party exercising such right.

D. Remedy

1. Seller agrees to repair or replace F.O.B. Seller's plant any Equipment manufactured by the Seller which does not conform to the warranty for Equipment and to reperform Services which do not conform to the warranty for Services, provided that notice of claim of defect is received by Seller within one year from date of shipment of Equipment from Seller's plant or performance of Services. Equipment claimed to be defective must be returned, freight prepaid and in accordance with Seller's instructions to the point of manufacture, unless Seller directs otherwise.
2. Purchaser shall give Seller written notice of any defect, damage or nonconformity as soon as possible in order to permit Seller to make a timely investigation of the facts.
3. In connection with the performance of any corrective work, all removal and reinstallation of the Equipment shall be performed by Purchaser. Purchaser shall, at its expense, be responsible for removing, reinstalling, replacing or supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment to be repaired or replaced. Any recontamination or radiation protection necessary in connection with the removal or on-site repair of the Equipment shall be performed by Purchaser without cost to Seller.
4. Title to and risk of loss of any Equipment being repaired shall remain with Purchaser at all times during the correction period wherever the repair takes place; provided, however, that Seller shall bear the risk of loss of any Equipment being repaired while such Equipment is away from Purchaser's facility and under Seller's care, custody and control. Transportation costs with respect to any replacement Equipment shall be paid by Purchaser.

E. Replaced or Replacement Equipment; Reperformed Services

When any Equipment is repaired or replaced or a Service is reperformed, the Equipment repaired or its replacement or the reperformed Service shall be subject to the same warranties, the same conditions and the same remedies provided for the original Equipment or Service; provided that the warranty period for the repaired or replacement Equipment or reperformed Service shall be for the balance remaining of the warranty period for the original Equipment or Service extending from the date of repair or replacement of the repaired or replacement Equipment or reperformance of the Service; provided, however, that the warranty period shall expire in no event later than twenty-four (24) months after the delivery of the original Equipment or performance of the original Service.

F. Exclusivity of Warranties

THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE EXCLUSIVE WARRANTIES OF SELLER AND NO OTHER WARRANTY, EXPRESS OR IMPLIED IN FACT OR BY LAW, IS APPLICABLE, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

5. Terms of Payment:

All prices are net cash 30 days, F.O.B. Seller's plant unless otherwise stated in this quotation. Seller reserves the right at any time to require cash payment in advance, security for payment or other payment terms satisfactory to Seller, and such modification shall not be a breach of the contract of purchase in the event Seller so elects to modify the terms of payment. Should Purchaser for any reason default in the payment of the contract of purchase, Purchaser agrees to pay all collection costs, attorney fees and expenses incurred in collecting payment, including interest on the amount due at the maximum legal contract rate. All transportation, insurance and similar charges incident to delivery shall be borne by Purchaser.

6. Taxes:

Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of Equipment or Services hereunder shall be paid by Purchaser, or in lieu thereof Purchaser shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities.

7. General Limitations of Liability:

Seller's total liability to Purchaser for all claims of any kind, whether based on contract, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from the performance or breach of the contract of purchase shall in no event exceed the amount of the price of the specific Equipment or Service which gives rise to the claim. In applying the monetary limitation of Seller's total liability, such liability shall be reduced by the sum of (1) any damages paid to Purchaser by Seller, (2) any costs incurred and settlements made by Seller under Section 4 "Warranties" and (3) any refund of the price for the Equipment or Services in the event of a rescission.

In all cases where Purchaser's claim, whether based upon contract, tort (including negligence), strict liability or otherwise, involves defective work or malfunctioning Equipment or Services, or damage resulting therefrom, Purchaser's exclusive remedies and Seller's sole liability shall be those specifically provided for under Section 4 "Warranties."

Seller shall not be responsible for the acts and workmanship of the employees, contractors, subcontractors or agents of Purchaser.

Seller shall not be liable for any property damage (including the equipment within the work description) or personal injury caused by (a) the negligence or fault of Purchaser's employees, contractors, subcontractors, agents or maintenance men, (b) failure to observe Seller's advice, (c) failure of malfunctioning of any tools, equipment, facilities or devices not furnished by Seller, or (d) use of instruments or the making of adjustments by Purchaser's employees, contractors, subcontractors or agents.

In no event, whether based upon contract, tort (including negligence), strict liability or otherwise, and whether arising before or after completion of its obligations under the contract of purchase, shall Seller be liable to Purchaser for losses or damages caused by reason of loss of use, revenue or profits, or cost of capital, or special, consequential or penal damages of any nature, and Purchaser shall indemnify Seller against any such claims by any third party.

The liability, if any, for any claims, whether based upon contract, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from, the performance or breach of the contract of purchase shall be limited to specifically identified written claims submitted prior to the expiration of the applicable warranty period as set forth under Section 4 "Warranties."

The provisions of this Section "General Limitations of Liability" shall also protect Seller's Suppliers, shall apply to the full extent permitted by law regardless of fault and shall survive termination, cancellation or completion of the work under the contract of purchase.

Purchaser shall not sell the Equipment, Services or Product or otherwise transfer any interest therein without first securing from the transferee limitation of liability at least equivalent to that afforded Seller and its Suppliers as provided in this Section 7 and, if applicable, nuclear liability protection as provided in Seller's Addendum for Nuclear Liability Protection (P-42).

8. Severability:

If any provision of the contract of purchase is deemed to be void, invalid or inoperative for any reason, or any phrase or clause within such provision is deemed to be void, invalid or inoperative, that phrase, clause or provision shall be deemed modified to the extent necessary to make it valid and operative; or if it cannot be so modified, then such phrase, clause or provision shall be deemed severed from the contract of purchase, with the remaining phrases, clauses and provisions continuing in full force and effect as if the contract of purchase had been signed with the void, invalid or inoperative portion so modified or eliminated.

9. Cancellation:

Purchaser may cancel the contract of purchase only upon written notice and upon payment to Seller of reasonable and proper cancellation charges.

If in the opinion of Seller the financial condition of Purchaser does not justify continuance of the contract, Seller may require full or partial payment in advance or shall receive reimbursement for its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of Purchaser or in the event any proceeding is brought against Purchaser, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to exercise its contract of purchase at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.

10. Suspension:

In the event Purchaser elects to suspend work under the contract of purchase, Purchaser shall notify Seller one week in advance of the suspension date. This notification shall be in writing and include the anticipated suspension period. Seller shall advise Purchaser of the price adjustment which shall be based on Seller's ability to reallocate manpower, material and equipment during the suspension period and any other differences in costs caused by the suspension.

11. Assignments:

Any transfer or assignment (including any transfer or assignment by operation of law or otherwise) of the contract of purchase or any rights thereunder by Purchaser without written consent of Seller shall be void.

12. Applicable Law:

The rights and obligations of the parties under the contract of purchase shall be interpreted and governed in all respects by the laws of the State of California.

13. Limitation of Actions:

The statute of limitations for purposes of bringing any action under the contract of purchase shall be one (1) year from the date the cause of action accrues.

14. Nuclear Liability Protection:

If Seller furnishes Equipment or Services under the contract of purchase for a nuclear power plant, the provisions of Seller's Addendum for Nuclear Liability Protection (P-6?) are hereby incorporated in the contract of purchase.

15. Entire Agreement:

The contract of purchase, consisting of these terms and conditions, Seller's quotation and Purchaser's order if accepted in writing by Seller, constitutes the entire agreement between Purchaser and Seller. All other previous and collateral agreements (including letters of intent or purchase orders issued by Purchaser), representations, warranties, promises and conditions relating to the subject matter hereof are superseded by the contract of purchase. Any understanding, promise, representation, warranty or condition not incorporated in the contract of purchase shall not be binding on either party.