

## AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this **4th day of January 2006**, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and **R.C. Beach & Associates, Inc., a Florida corporation, whose business address 539 San Christopher Drive, Dunedin, FL 34698** (hereinafter referred to as the "CONTRACTOR").

### WITNESSETH:

WHEREAS, the OWNER desires to obtain the professional services of the CONTRACTOR concerning certain services related to the **replacement of a 75 horsepower (HP) effluent transfer pump for the Wastewater Treatment Plant reclaimed water system** (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, which is attached hereto and incorporated herein; and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

### ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Basic Services to be performed by CONTRACTOR hereunder are **replacement of a 75 horsepower (HP) effluent transfer pump for the Wastewater Treatment Plant reclaimed water system.**

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONTRACTOR's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR hereunder. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding

resolution of the conflict.

1.6. CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. In the event CONTRACTOR violates the provisions of this paragraph, CONTRACTOR shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.8. CONTRACTOR agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.9. Except as otherwise provided herein, CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of CONTRACTOR'S contractual relationship with OWNER for the special gain or benefit of CONTRACTOR or for the special gain or benefit of any other person or entity.

## **ARTICLE TWO OWNER'S RESPONSIBILITIES**

2.1. The Owner shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR hereunder;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONTRACTOR.

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for CONTRACTOR to enter the Project site to perform the services to be provided by CONTRACTOR under this Agreement; and

(c) Provide notice to CONTRACTOR of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONTRACTOR hereunder.

2.3. CONTRACTOR acknowledges that access to the Project Site, to be arranged by OWNER for CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

### **ARTICLE THREE TIME**

3.1. Services to be rendered by CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall be **performed and completed by January 31, 2006**. Time is of the essence with respect to the performance of this Agreement.

3.2. Should CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONTRACTOR shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONTRACTOR's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONTRACTOR, the services to be provided hereunder have not been completed within 18 months of the date hereof, the CONTRACTOR's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONTRACTOR after expiration of said 18 month period.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

### **ARTICLE FOUR COMPENSATION**

4.1. The total compensation to be paid to the CONTRACTOR by the OWNER for all Basic Services **shall be an amount not-to-exceed \$23,415.00** and shall be paid in the manner set forth in Exhibit A, which is attached hereto and incorporated herein.

**ARTICLE FIVE  
MAINTENANCE OF RECORDS**

5.1. CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONTRACTOR for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX  
INDEMNIFICATION**

6.1. CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employer or utilized by the Contractor in the performance of the Contract.

**ARTICLE SEVEN  
INSURANCE**

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B to this Agreement.

**ARTICLE EIGHT  
SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by CONTRACTOR's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE NINE  
WAIVER OF CLAIMS**

9.1. CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of CONTRACTOR's services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against CONTRACTOR.

**ARTICLE TEN  
TERMINATION OR SUSPENSION**

10.1. CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as

directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONTRACTOR or by any of CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR seven (7) calendar day's written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and CONTRACTOR's remedies against OWNER shall be the same as and limited to those afforded CONTRACTOR under paragraph 10.3 below.

10.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONTRACTOR. In the event of such termination for convenience, CONTRACTOR's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONTRACTOR that are directly attributable to the termination, but CONTRACTOR shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

#### **ARTICLE ELEVEN CONFLICT OF INTEREST**

11.1. CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

#### **ARTICLE TWELVE MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

#### **ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER's address of record:

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

13.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

**R.C. Beach & Associates, Inc.**  
**539 San Christopher Drive**  
**Dunedin, FL 34698**  
**Attn: Carla Meier**

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

**ARTICLE FOURTEEN**  
**MISCELLANEOUS**

14.1. CONTRACTOR, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by CONTRACTOR without the prior written consent of OWNER.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

**ARTICLE FIFTEEN**  
**APPLICABLE LAW**

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

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

ATTEST:

**OWNER:**

CITY OF NAPLES, FLORIDA,  
A Municipal Corporation

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

**CONTRACTOR:**

**R.C. BEACH & ASSOCIATES, INC.**

By: \_\_\_\_\_

\_\_\_\_\_  
witness

(CORPORATE SEAL)

Price Net FOB factory, freight allowed to the project site are as follows:

Alt. No. 1.

Complete repair as described here in with a material upgrade of the pump impeller to 316SS construction for longer life performance.

\$22,698.00 each Delivery will be in 4 weeks (30 working days).

Alt. No. 2

A complete replacement pump with all original materials of construction completed with conversion to packed stuffing box assembly (original was mech. Seal)

\$23,415.00 each Delivery will be in 20 weeks from order entry at the factory.

No Florida sales or use tax included should it apply.  
This proposal is valid for 45 days from above date.





Ruhrpumpen, Inc.  
4501 South 86<sup>th</sup> East Avenue  
Tulsa, OK 74145  
1-918-827-8400

October 15, 2005

Dear Valued Customer,

This letter confirms that R.C. Beach & Associates, Inc., Dunedin, Florida, is the authorized municipal representative for Ruhrpumpen Inc. for pumps and parts for all of Florida east of the Apalachicola River.

Please feel free to contact me at 865-207-4298 should you have any questions.

Sincerely,

*George Hill*

George M. Hill  
Director, North American Distribution  
Ruhrpumpen, Inc.

**RUHRPUMPEN INC.****NORTH AMERICAN TERMS AND CONDITIONS****1. 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.

**2. Acceptance:**

This quotation supersedes all previous quotations and agreements and is void unless accepted within 30 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 conflicting or additional terms and conditions contained in any order submitted by Purchaser shall be of no effect unless assented to in writing by Seller.

**3. 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, unusually severe 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.

**4. Warranties:****A. Equipment**

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

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 eighteen (18) months from shipment or twelve (12) months from installation, whichever comes first.

**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 start-up or on (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 acts or omissions 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 misuse 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 clear, fresh, non-aerated 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 lieu thereof 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 expenses shall be borne by the party exercising such right.



**RUHRPUMPEN INC.****NORTH AMERICAN TERMS AND CONDITIONS****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 re-perform 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 decontamination 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 whenever 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, customer and control. Transportation costs with respect to any replacement Equipment shall be paid by Purchaser.

**E. Repaired or Replacement Equipment; Re-performed Services**

When any Equipment is repaired or replaced or a service is re-performed, the Equipment repaired or its replacement or the re-performed 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 re-performed 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 re-performance 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, or 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. For orders above \$ 80,000, progress payments in accordance with the following milestone events apply:

**Milestone:**

- |  |     |
|--|-----|
| • Submittal of Outline Drawings            | 10% |
| • Purchase of Major Components/Accessories | 30% |
| • Completion of Major Machining            | 20% |
| • Shipment                                 | 40% |

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 nonconforming 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 material men, (b) failure to observe Seller's advice, (c) failure or 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.





**RUHRPUMPEN INC.****NORTH AMERICAN TERMS AND CONDITIONS**

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 limitations of liability at least equivalent to that afforded Seller and its Suppliers as provided in this Section 7.

**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 provisions 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 as follows:

**CANCELLATION CHARGE SCHEDULE:**

<u>Phase Completed</u>	<u>% of Total Order Value</u>	<u>Cumulative %</u>
Order Entry	5%	5%
Engineering	15%	20%
Purchasing	5%	25%
Material Procurement	35%	60%
Production (Material Planning)	10%	70%
Assembly	10%	80%
Test	10%	90%
Paint/Prep/Ship	10%	100%

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 of 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 cancel the 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 Oklahoma.

**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 accrued.

**14. 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.

## GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate **and the following must also be stated on the certificate**. "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

**The City of Naples  
735 Eighth Street South  
Naples, Florida 34102**

No City Division, Department, or individual name should appear on the Certificate.  
No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"