

AGREEMENT FOR PURCHASE AND SALE OF GOODS

Bid/Proposal No.

Contract No. _____

Project Name **Purchase Flygt Pumps for the Utilities Department**

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **14th day of December, 2011**, by and between **Xylem, Inc.**, whose address is **5771 Country Lakes Drive, Fort 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 pumps** as 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 of: **\$250,000.00** 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, **Utilities Attn: Kevin Swisher, 380 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: A. William Moss, 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: Xylem, Inc.	(Branch Location)
Address: 14125 South Bridge Circle	5771 Country Lakes Drive
Charlotte, North Carolina 28273	Fort Myers, Florida 33905
Attention: Christopher Stewart	Fort Myers Branch Manager

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

15. **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 whose signature appears thereon and all of which shall together constitute one and the same instrument.

16. **Effective Date.** This Agreement shall take effect on the day of execution by the last party to execute this agreement **for a period of three years with the option to renew for two additional one-year periods.**

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

ATTEST:

"SELLER":

Xylem, Inc.

(Corporate Seal)

(Print Name: _____)

By: _____
Authorized Representative

ATTEST:

"BUYER"

City of Naples, Florida

By: _____
Tara A. Norman, City Clerk

By: _____
A. William Moss, 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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xylem

Flygt Products
2152 Sprint Blvd. Apopka Florida 32703
Phone: 407-880-2900 • Fax: 407-880-2962

November 17, 2011

Attn: Kevin Swisher

City of Naples
380 Riverside Circle
Naples, Florida 43102

Subject: FLYGT PRODUCTS – SALES & SERVICE

Please be advised that xylem, inc. is the only authorized vendor for Flygt Products and is the only authorized service repair and warranty organization in the State of Florida; (East of the Apalachicola River). Their staff is properly trained to provide you the best service available.

xylem, inc. is the sole source and shipping point for Florida is the Apopka, Florida facility.

Thank you for your interest in Flygt Products. Do not hesitate to call me if you have any questions regarding distribution or any other matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin Swisher", is written over a horizontal line.

xylem, inc. / Flygt Products

*Flygt Products include submersible pumps, mixers, valves, M&C products, Syracuse safe hatch access covers and control panels.



Price List "C" Pumps

City of Naples
Price List - Flygt Pumps
October 31, 2011

<u>MODEL</u>	<u>IMPELLERS</u>	<u>HP</u>	<u>CABLE</u>	<u>PRICE EACH</u>
4"CP3085	434, 436, 438, 440	3	50	\$ 3,657.00
4"CP3102	432, 433, 434, 435	5	50	\$ 4,552.20
4"CP3127	485	7.5	50	\$ 5,562.00
4"CP3127	483,484,485	10	50	\$ 6,208.00
4/6" CP3127	432, 433, 434	10	50	\$ 6,208.00
4"CP3152	487, 488	15	50	\$ 9,883.00
4"CP3152	454	20	50	\$ 10,475.00
6"CP3152	454, 432, 434	20	50	\$ 10,472.00
6"CP3201 460V	452, 454, 457, 458	47	50	\$ 19,711.00
6"CP3201 460V	454	30	50	\$ 17,370.00
8"CP3201 460v	632, 634, 636, 637, 638	35	50	\$ 18,692.00
8"CP3231 460V 665 DRIVE	430	160HP	100'	\$ 56,810.00
6"CP3300 460V	454, 461, 462, 463, 464, 465, 466, 467, 468	88	50	\$ 35,043.00
6"CP3300 460V	467, 468	60	50	\$ 30,817.00
10"CP3300 460V	636,638, 640, 642, 644, 646, 648	75	50	\$ 33,231.00
12"CP3300 460V	804, 805, 806, 807, 808, 809	60	50	\$ 29,131.00
PL7061/655	885	85	50	\$ 46,657.00

NOTES:

1. PUMP PRICE INCLUDES PUMP, 50' MOTOR CABLE.
2. DRILL CHARGE IS \$150.00/ PUMP WHEN ORDERED FROM EXISTING INVENTORY.
3. DRILL CHARGE WAIVED IF PUMPS ORDERED FROM FACTORY.

Price List "N" Pumps

City of Naples
Price List - Flygt Pumps
October 31, 2011

<u>MODEL</u>	<u>IMPELLERS</u>	<u>HP</u>	<u>CABLE</u>	<u>PRICE EACH</u>
4"NP3085	462, 463	3	50	\$ 3,391.00
4"NP3102	462, 463, 464, 465	5	50	\$ 4,219.00
6"NP3102	422, 423	5	50	\$ 4,508.00
4"NP3127	438, 439, 487, 488, 489	10	50	\$ 6,169.00
6"NP3127	421, 422	10	50	\$ 6,169.00
4"NP3127	489, 439	7.5	50	\$ 5,695.00
6"NP3127	422, 439	7.5	50	\$ 5,695.00
4"NP3153	461, 462, 463, 464, 465, 466	20	50	\$ 10,771.00
4"NP3153	463, 464	15	50	\$ 10,158.00
6"NP3153	433, 434, 435, 436	20	50	\$ 10,771.00
6"NP3153	435, 436	15	50	\$ 10,158.00
6"NP3153	436	12	50	\$ 10,073.00
4"NP3171	452, 453, 454, 455	30	50	\$ 15,827.00
4"NP3171	454	34	50	\$ 16,460.00
4"NP3171	455	25	50	\$ 14,287.00
6"NP3171	433, 434, 435, 436, 437	30	50	\$ 16,057.00
6"NP3171	435, 436, 437	25	50	\$ 14,287.00

NOTES:

1. PUMP PRICE INCLUDES PUMP, 50' MOTOR CABLE.
2. DRILL CHARGE IS \$150.00/ PUMP WHEN ORDERED FROM EXISTING INVENTORY.
3. DRILL CHARGE WAIVED IF PUMPS ORDERED FROM FACTORY.

Price List "N" Pumps

City of Naples
Price List - Flygt Pumps
October 31, 2011

<u>MODEL</u>	<u>IMPELLERS</u>	<u>HP</u>	<u>CABLE</u>	<u>PRICE EACH</u>
6"NP3202 460V	456, 458, 460, 462	70	50	\$ 30,636.00
8"NP3202 460V	640, 641, 642, 643	60	50	\$ 31,578.00
6"NP3301	462, 464	85	50	\$ 35,713.00
10"NP3301	634, 636, 638, 639	85	50	\$ 41,694.00
10"NP3301	636, 638, 639	70	50	\$ 34,392.00

NOTES:

1. PUMP PRICE INCLUDES PUMP, 50' MOTOR CABLE.
2. DRILL CHARGE IS \$150.00/ PUMP WHEN ORDERED FROM EXISTING INVENTORY.
3. DRILL CHARGE WAIVED IF PUMPS ORDERED FROM FACTORY.



ITT FLYGT WARRANTY

For the period defined, ITT FLYGT offers a commercial warranty to the original End Purchaser against defects in workmanship and material. Warranty covers parts and labor as outlined in **ADDENDUM – A**.

COVERAGE:

ITT FLYGT will pay the cost of parts and labor during the warranty period, provided that the product, with cable attached, is returned prepaid to an ITT FLYGT Authorized Service Facility for repairs. Coverage for parts and labor will be provided for the period shown in **ADDENDUM - A**. The warranty period will begin from date of shipment or date of a valid Start-up (For permanently installed pumps only). In cases where the Start-up date is used as the beginning of the warranty on a permanently installed pump, a Start-up Report completed by an approved service technician from an ITT FLYGT Authorized Service Facility must be received by the ITT FLYGT Area Service Manager within thirty (30) days of the initial onset of the unit placed into service. If not received, the beginning of the warranty coverage will default to the product ship date. A Start-up for a permanently installed pump must occur within one (1) year from the date of shipment from ITT FLYGT or warranty will automatically default to ship date as start of warranty. (See **STORAGE** section). When using the start-up date as the beginning of the warranty period then a copy of the Start-up Report is required to support a Warranty Claim. Warranty on Dewatering pumps will begin with ship date.

ITT FLYGT'S sole obligation under this Warranty shall be to replace, repair or grant credit for product upon ITT FLYGT'S exclusive determination that the product does not conform to the above warranty. In the event that the product is replaced, warranty on the replacement product will be equal to the balance remaining on the original product or ninety (90) days, which ever is greater.

MISUSE:

This Warranty shall not apply to any product or part of product which (i) has been subjected to misuse, misapplication, accident, alteration, neglect, or physical damage (ii) has been installed, operated, used or maintained in a manner and/or in an application contrary to ITT FLYGT'S printed instructions for installation, operation and maintenance, including without limitation operation without being connected to monitoring devices supplied with specific products for protection; or (iii) has been damaged due to a defective power supply, improper electrical protection, faulty installation or repair, ordinary wear and tear, corrosion or chemical attack, an act of God, an act of war or by an act of terrorism; or (iv) has been damaged resulting from the use of accessory equipment not sold by ITT FLYGT or not approved by ITT FLYGT in connection with the product.

WEAR PARTS:

This warranty does not cover costs for standard and/or scheduled maintenance performed, nor does it cover parts that, by virtue of their operation, require replacement through normal wear (aka: Wear Parts), unless a defect in material or workmanship can be determined by ITT FLYGT. Wear Parts are defined as Cutters, Cutting Plates, Impellers, Agitators, Diffusers, Wear Rings (Stationary or Rotating), Volutes (when used in an abrasive environment), oil, grease and/or any items deemed necessary to perform normal maintenance on ITT FLYGT equipment.

DISCLAIMERS:

(i) ITT FLYGT'S warranties are null and void when the product is exported outside of the United States of America without the knowledge and written consent of ITT Flygt US; (ii) ITT FLYGT makes no independent warranty or representation with respect to parts or products manufactured by others and provided by ITT FLYGT (however, ITT FLYGT will extend to the Purchaser any warranty received from ITT FLYGT'S supplier of such parts or products).

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ITT FLYGT WARRANTY

LIMITATIONS:

ITT FLYGT NEITHER ASSUMES, NOR AUTHORIZES ANY PERSON OR COMPANY TO ASSUME FOR ITT FLYGT, ANY OTHER OBLIGATION IN CONNECTION WITH THE SALE OF ITS EQUIPMENT. ANY ENLARGEMENT OR MODIFICATION OF THIS WARRANTY BY A DISTRIBUTOR, OR OTHER SELLING AGENT SHALL BECOME THE EXCLUSIVE RESPONSIBILITY OF SUCH ENTITY.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE PRODUCT(S), INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. PURCHASER'S EXCLUSIVE REMEDY AND ITT FLYGT'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES IS LIMITED TO REPAIRING OR REPLACING THE PRODUCT AND SHALL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE PURCHASER HEREUNDER. IN NO EVENT IS ITT FLYGT LIABLE FOR ANY OTHER FORM OF DAMAGES, WHETHER DIRECT, INDIRECT, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY OR LOSS OF REPUTATION.

ITT FLYGT WILL NOT BE HELD RESPONSIBLE FOR TRAVEL EXPENSES, RENTED EQUIPMENT, OUTSIDE CONTRACTOR'S FEES, EXPENSES PERFORMED BY AN UNAUTHORIZED REPAIR SHOP, UNAUTHORIZED ALTERATIONS, OR FOR PUMPS USED WITHOUT ITT FLYGT SUPPLIED CABLE OR CONTROLS UNLESS IT CAN BE PROVEN SUCH ANCILLARY EQUIPMENT IS SUITABLE FOR THE PURPOSE AND EQUAL TO ITT FLYGT CABLES OR CONTROLS THAT WOULD ORIGINALLY BE SUPPLIED WITH THE TYPE OF EQUIPMENT IN USE. REIMBURSEMENT COSTS FOR CRANES AND/OR ANY SPECIAL EQUIPMENT USED IN CONJUNCTION FOR THE REMOVAL OR REINSTALLATION OF ANY ITT FLYGT EQUIPMENT IS NOT COVERED UNDER THIS WARRANTY.

REQUIREMENTS:

A copy of Electrical System Schematics of the control used (including Control's Bill of Material) could be required to support a Warranty Claim when a non Flygt control is used. In addition, a written record, hereby known as "the log", will be associated with each unit serial number and must be maintained by the organization having product maintenance responsibility. The log must record each preventative maintenance activity and any repair activity during the life of the warranty or verification that a Flygt authorized Service Contract is in force and is available for review and/or auditing. Failure to meet these conditions could render this warrant null and void. Such logs could be required to determine warranty coverage.

STORAGE:

Should a delay occur between ship date and the date of start-up, maintenance as outlined in ITT FLYGT's *Care & Maintenance Manual* must be performed by the "CONTRACTOR" and/or "OWNER" during any such period of storage. Documentation providing proof and outlining what maintenance was performed must be provided to ITT FLYGT or its representative within thirty (30) days of said maintenance, or the ITT FLYGT warranty could be considered void.

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ITT FLYGT WARRANTY

CONTROLS:

Warranty coverage for permanently installed controls start on date of shipment to end purchaser. This warranty does not apply to controls that have been damaged due to a defective and/or improper input power supply, improper electrical protection, accidental damage, improper or unauthorized installation and/or repair, unauthorized alteration, negligence, environmental corrosion or chemical attack, improper maintenance or storage of control, any act of God, an act of war, an act of terrorism or damage resulting from the use of accessory equipment not approved by ITT Flygt. Further, this warranty does not apply in the event an adjustment is found to correct the alleged defect.

Solid state devices will be covered for a period of one year. Electrical control panels containing controllers, PLC's, drives, soft starts, and other computerized equipment require Transient Voltage Surge Suppression (TVSS) protection in order to satisfy the requirements of this warranty. The protection equipment associated with the control must be kept in working condition during the life of the warranty. Auxiliary equipment supplied with the control (air-conditioners etc.) is limited by the respective original equipment manufacturer's warranty offered. Components not supplied by Flygt are not covered by this warranty.

TOPS (The Optimum Pump Station)

ITT Flygt will warrant the TOPS pre-engineered fiberglass pump station components against defects in material and workmanship for a period of one (1) year from date of start-up or eighteen (18) months from date of shipment, whichever is sooner to the original owner of the station. Warranty shall cover the cost of labor and materials, excluding removal and reinstallation costs, required to correct any warrantable defect, FOB, Manufacturer's authorized warranty service location. ITT Flygt products contained within a TOPs pre-engineered fiberglass pump station will carry the standard ITT Flygt warranty for the product and/or accessory installed in the TOPs pre-engineered fiberglass pump station.

All restrictions and/or limitations as outlined and described within the context of this warranty are germane to all sections of this ITT Flygt Warranty document.

ITT Flygt US
National Quality Assurance - US Corporate
prodqual@itt.com

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ITT FLYGT WARRANTY

ADDENDUM - A WARRANTY COVERAGE BY PRODUCT

PRODUCT	PRODUCT SERIES AND CONFIGURATION	Months 1 - 12	Months 13 - 18	Months 19 - 36	Months 37 - 39	Months 40 - 60
Axial Flow/ Mixed Flow/ Centrifugal Pumps & Mixers	3000 Series (CP, NP, DP, CT, NT, CZ, LL) 7000 Series (PL), 4000 Series (SR, PP)	100%	100%	50%	25%	
Electrical Control Panels (permanently installed)	Flygt Manufactured Control Panels	100%	100%			
Abrasion/Corrosion Resistant & Chopper/ Grinder Pumps	3000 Series (MP, MF, MH, FS, FP, HP, HS) 5000 Series (HP, HS)	100%	100%			
Dewatering Pumps	2000 Series (BS, KS) 3000 Series (CS, NS, DS)	100% (From Ship Date)	100% (From Ship Date)			
TOPS	Fiberglass Pump Station	100% (From Ship Date)	100% (From Ship Date)			
Accessories	Permanent / Portable	100% (From Ship Date)	100%			
Hydro ejectors/ Aerators	HE, JA	100%	100%			
Portable Pump Controls	Control Boxes (Nolia, MSHA etc.)	100% (From Ship Date)	100% (From Ship Date)			
Small Pumps	3045, 3057, SX	100% (From Ship Date)	100% (From Ship Date)			
Parts - *	All new spare parts	100% (From Ship Date)	100% (From Ship Date)			

* - Parts that fail where used in a repair are warranted for one (1) year from the date of the repair for the failed part only - no labor.
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