

AGREEMENT FOR PURCHASE AND SALE OF GOODS

Bid/Proposal No.

Contract No. 12-00063

Project Name City Street Lighting

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **3rd day of October, 2012**, by and between **Philips Lumec**, whose address is **6171 Reliable Parkway, Chicago, Illinois, 60686** ("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 of **\$78,950.00** 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, Street & Stormwater Dept, 295 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 (**EXHIBIT B**).

Revised 7/7/03

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
735 Eighth Street South
Naples, Florida 34102-3796
Attention: A. William Moss, City Manager

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:

Philips Lumec
6171 Reliable Parkway
Chicago, Illinois 60686
Attention: Ronald J Steedman, Manufacturers Representative

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 whose 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:


(Print Name: DAWN STEEDMAN)


SELLER:
Philips Lumec

(Corporate Seal)
By: 
Authorized Representative
Ronald S Steedman, RJ Steedman LLC

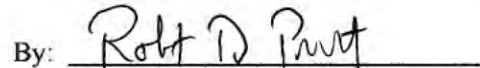
ATTEST:

By: 
Patricia L Rambosk, City Clerk

BUYER

City of Naples, Florida
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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EXHIBIT A

Street Light Poles/Globes

| | Price | Number | Total |
|---|------------|--------|--------------------|
| #OT10-175PSMH-SSA3M-ACDR-QTA120-HE-DA-DF10-SPR4D-12-GFII-LBC3-GN8-TX | \$2,025.00 | 5 | \$10,125.00 |
| #CAND2-150MH-PC-C-CPD-RR3-QTA240-HE-WHTX | \$1,125.00 | 5 | \$5,625.00 |
| #150MH-DMS50-SG3-QTA240-LR-HE-VR302-1A-AM6U-16-WH-TX | \$2,750.00 | 2 | \$5,500.00 |
| # LLCYL-70MH-AC-CPD-RR5-QTA240-1-AM6F-12.5-WH-TX-LMS13123A | \$3,650.00 | 5 | \$18,250.00 |
| # LLCYL-70MH-AC-CPD-RR5-QTA120-LMS3A-AM6U-10-TRANSFO100-480/120-WH-TX-LMS13285D | \$7,850.00 | 2 | \$15,700.00 |
| Retro-60864-30-Globe-CAND2-PC-CPD-WHTX-LMS53067B | \$250.00 | 95 | \$23,750.00 |
| | | | \$78,950.00 |

PHILIPS LUMEC PRODUCT & SURFACE FINISH

WARRANTY INFORMATION

PHILIPS LUMEC warrants to its Customer only that its products shall be free from defects in material and workmanship (excluding ballasts and photoelectric controls, see below) for a period of one (1) year from the date of shipment. Subject to the "Surface Finish Warranty Limitations" below, PHILIPS LUMEC warrants the visible painted surfaces of its products, as finally assembled at site, shall remain free from discoloration, loss of gloss retention, corrosion and lack of adhesion, for a period of five (5) years from date of shipment. In order for a valid warranty claim to be honored, a detailed description of any defect(s) covered by this warranty must be given within the warranty period to PHILIPS LUMEC in writing. If PHILIPS LUMEC determines that the warranty claim is valid and that a defect exists, Philips Lumec, at its sole option, will either refund the purchase price originally paid for the subject product or will repair or replace the defective part or product at PHILIPS LUMEC's cost, such repair to occur either onsite or, at PHILIPS LUMEC's option, at its factory (should a factory repair be required, product to be removed at Customer's cost and returned to Lumec freight prepaid). The remedy chosen at PHILIPS LUMEC's option shall be Customer's sole and exclusive remedy under this warranty. In no event will Lumec be responsible or liable for any labor costs at site for the removal or replacement of defective products or materials, except for that portion of the cost to repair at site, which Philips Lumec alone determines to undertake hereunder at site (if any). In no event will Philips Lumec ever be liable to Customer or to any other party for any expenses, losses or damages beyond the original cost of the subject product. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND PHILIPS LUMEC DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PHILIPS LUMEC SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND PHILIPS LUMEC'S LIABILITY, BEING LIMITED TO REPAIR OR REPLACEMENT AS SET FORTH, NOT TO EXCEED THE ORIGINAL PRICE PAID FOR THE SUBJECT LUMEC PRODUCT.**

BALLASTS AND PHOTOELECTRIC CONTROLS MAY BE COVERED BY SEPARATE WARRANTY FROM THE MANUFACTURER OF SUCH PRODUCTS, BUT PHILIPS LUMEC SELLS THESE ITEMS CONTAINED WITHIN ITS PRODUCTS "AS IS." PHILIPS LUMEC ACCEPTS NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. If Customer has a potential ballast or photoelectric control problem, information on how to assert a claim against the manufacturer of the subject ballast(s) or photoelectric control(s) will be posted on the manufacturers site.

SURFACE FINISH WARRANTY LIMITATIONS. Whether the surface finish of a product is defective within the warranty period with respect to "discoloration," "gloss retention" or "corrosion and lack of adhesion" shall be determined as follows:

Discoloration

Discoloration in excess of 5 E units (CIE 1976 CIELAB) as measured using procedure ASTM D 2244, latest revision, comparing an unexposed sample to an exposed surface after removal of dirt and chalk.

Gloss retention

A minimum of 30 % gloss retention as measured using procedure ASTM D 523, latest revision, comparing an unexposed sample to an exposed surface after removal of dirt and chalk.

Corrosion and lack of adhesion

Corrosion and lack of adhesion in excess of Rust Grade 5, as measured using procedure ASTM D 610, latest revision, based on the complete product assembly. For the purpose of this warranty, this procedure applies to both aluminum and steel.

Not covered by this warranty:

- Surface finish on replacement parts not supplied by Lumec.
- Damages caused by improper use, negligence, accident, foreign material attached to the equipment and damages resulting from poor installation.
- Corrosion, flaking or discoloration caused by environmental drops and / or acts of God such as hail, storm, acid rain, tree sap, water immersion or airborne materials.

Any metallic color surface finish is covered by a one-year warranty only unless a LUMEC clear coating has been specified, in which event the five (5) year warranty shall apply.