

# PUMP PURCHASE AGREEMENT

## I. Recitals

A. The City of Newport (City) desires to purchase a submersible pump for its wastewater system, but wants to have a performance test period before making the purchase.

B. The City properly conducted an intermediate procurement under City Rule 137-047-0270 and ORS 279B.070.

C. The quote submitted by Xylem Water Solutions, USA, Inc. (Xylem), was chosen as best serving the City's interests based upon price, as well as Xylem's willingness to permit the City to conduct performance tests prior to purchase.

## II. Exhibits

Unless modified by the terms of this Agreement, all terms of the following exhibits are hereby incorporated by reference into this Agreement and Xylem Water Solutions, USA, Inc., agrees to comply with each:

- A. Exhibit A, NT 3202 HT 3 phase, 460 volt, Technical Specification
- B. Exhibit B – Seller's General Terms and Conditions of Sale/Quote #2013-POR-0051
- C. Exhibit C – Seller's Pump Clog-Free Operations Guaranty
- D. Exhibit D – "Energy Consumption Reduced, Money Saved" Pamphlet
- E. Exhibit E – Oregon Public Contracting Requirements for Goods and Service Contracts

In the event of a conflict, the provisions of this Agreement control, followed by Exhibit E, then Exhibits A – D, in that order.

## III. Agreement

This Pump Purchase Agreement ("Agreement") is made and effective as of JUNE 24TH, 2013 (the "Effective Date") between Xylem Water Solutions USA, Inc., a corporation ("Seller"), and the City of Newport, an Oregon municipal corporation ("Buyer").

1. Purchase and Sale. Subject to the success of the performance test described in Section 4 of this Agreement, in consideration of Buyer's payment of forty-thousand fifty-two dollars (\$40,052.00) (the "Purchase Price") Seller hereby

sells, conveys, transfers and assigns to Buyer all of its right, title and interest in and to all of the equipment and related goods and materials described on Exhibit A, NT 3202 HT 3 phase, 460 volt, Technical Specification, hereto (the "Equipment"), free and clear of any and all liens, to Buyer, its successors and assigns forever, to and for their own use and benefit.

2. Payment. If the pump successfully meets the performance test described in Section 4 of this Agreement, Buyer shall pay the Purchase Price within 30 days following the performance testing period.

3. Delivery and Possession. Buyer shall be responsible for taking physical possession of the Equipment in its original condition and packaging at the City of Newport's Wastewater Treatment Facility located at 5525 SE 50<sup>th</sup> Street, Newport, OR 97365, with risk of loss to pass to Buyer upon Buyer taking possession of the Equipment. Seller shall not thereafter be liable for any loss or damage in transport, shipping, packaging or handling.

4. Performance Test. Upon receipt of the Equipment, Buyer will install the Equipment at the Nye Beach lift station and operate it in accordance with Seller's standard installation and operating guidelines. Seller shall provide City with a qualified technician to assist City with start-up, upon City's request. For 6 months (182 days) from the date of installation, the Equipment shall be operated in City's normal course of use. The purpose of the performance test is to evidence the Equipment's successful non-clog operation in both dry and wet weather conditions, and to provide a 25% energy savings to Buyer.

Buyer shall determine in good faith, but in its sole discretion, whether the Equipment performs satisfactorily. If the Equipment meets with Buyer's satisfaction, Buyer shall make payment to Seller per Section 2 of this Agreement. If the Equipment is not satisfactory to the Buyer, the Buyer may return the supplied Equipment, and Seller shall accept it. If returned, Buyer has no further obligation under this Agreement for payment or otherwise with the exception that Buyer will be responsible for any damage to the Equipment or missing components not associated with reasonable wear and tear.

5. General Terms and Conditions of Sale. Seller's General Terms and Conditions of Sale together with the statements in Quote #2013-POR-0051, both attached hereto as Exhibit B, are incorporated herein, except as modified by this Agreement. Specifically:

- A. General Condition 6, Risk of Loss, is replaced by Paragraph 3, above;
- B. General Condition 7, Warranty, is modified by Paragraph 6, below;
- C. General Condition 9, Seller's Liability, is hereby modified to omit its last sentence;

- D. General Condition 13, Cancellation, is modified by Paragraph 7, below;
- E. General Condition 20, Entire Contract, is replaced by Paragraph 13, below; and
- F. General Condition 21, Governing Law, is replaced by Paragraphs 11 and 12, below.

6. Warranty. The Warranty provided by the General Terms and Conditions of Sale and as further described in the Pump Clog-free Operations Guarantee, attached hereto as Exhibit C, are modified to extend the warranty/guarantee period to 24 months from the date of start-up. In addition, the guarantee terms of the "Energy Consumption Reduced, Money Saved" pamphlet and the claim provisions in it, are attached hereto as Exhibit D and incorporated by this reference.

7. Cancellation. Should this Agreement be cancelled or terminated for failure of the Equipment to meet Buyer's satisfaction during the performance test period, there shall be no termination charges.

8. Public Contracting Requirements. Seller shall comply with all federal, state and local laws and ordinances applicable to this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code including ORS 279B.020, 279B.220, 279B.230 and 279B.235, as more particularly set forth in Exhibit E.

9. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, rescission or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

10. Litigation Expenses. In any litigation or arbitration between the parties arising from or in any way pertaining to the interpretation or enforcement of this Agreement, including any action for rescission of this Agreement, the prevailing party shall be entitled to recover, as a part of any arbitration award or judgment, that party's costs and reasonable attorney's fees incurred in connection with such proceeding, at hearing or trial and on appeal.

11. Applicable Law. This Agreement shall be construed in accordance with Oregon law.

12. Consent to Jurisdiction. The parties hereby consent to jurisdiction of the Lincoln County Circuit Court, Lincoln County, Oregon, over all legal matters pertaining to this Agreement including, but not limited to, its enforcement and interpretation.

13. Entire Agreement. This Agreement is the complete and exclusive statement of the parties' agreement, and supersedes all prior and contemporaneous communications or representations, oral, written or implied, relating to Buyer's purchase of the Equipment. No communications or representations made by either party or either party's agents not expressly set forth herein shall be binding on either party. This Agreement may only be modified or any term hereof waived by the parties' written agreement, and no waiver of any obligation hereunder shall constitute a continuing waiver.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be duly executed and delivered as of the Effective Date.

SELLER:

Xylem Water Solutions, USA, Inc.

GRANT STAYBERG

By: [Signature]

Title: BRANCH MANAGER

Date: JUNE 24TH, 2013

BUYER:

The City of Newport

Ted Smith

By: [Signature]

Title: Interim City Manager

Date: JUNE 25th, 2013



# NT 3202 HT 3~ 460



## Performance curve

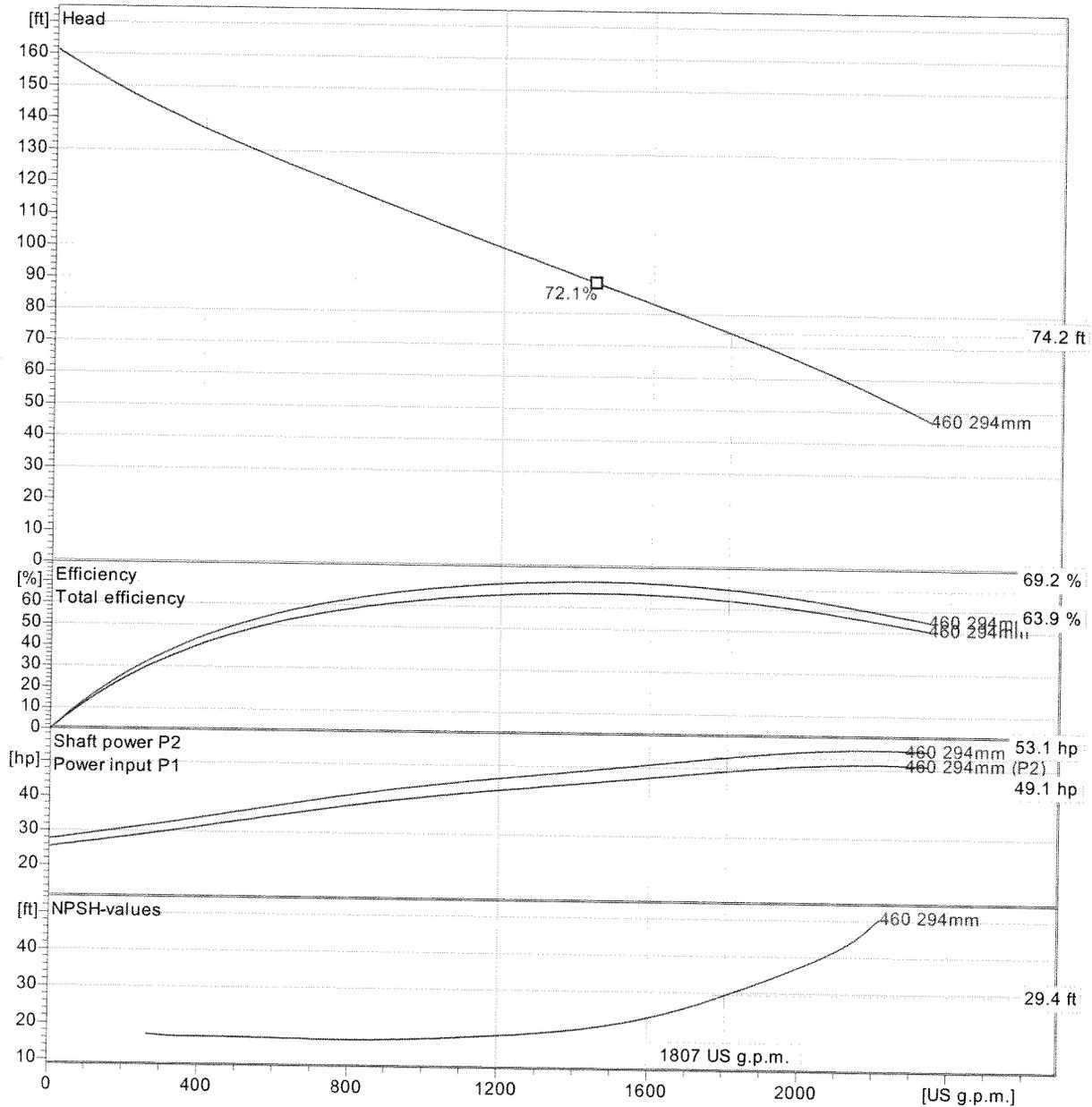
### Pump

Outlet width 5 7/8 inch  
 Inlet diameter 200 mm  
 Impeller diameter 11 9/16"  
 Number of blades 2  
 0 inch

### Motor

Motor # N3202.095 30-24-4AA-D 60hp  
 Stator variant 4  
 Frequency 60 Hz  
 Rated voltage 460 V  
 Number of poles 4  
 Phases 3~  
 Rated power 60 hp  
 Rated current 69 A  
 Starting current 470 A  
 Rated speed 1775 1/min

Power factor  
 1/1 Load 0.89  
 3/4 Load 0.86  
 1/2 Load 0.78  
 Efficiency  
 1/1 Load 91.5 %  
 3/4 Load 92.5 %  
 1/2 Load 92.0 %



Curve according to: ISO 9906 grade 2 annex 1 or 2

### Duty point

Flow 1850 US g.p.m.  
 Head 75 ft

Shaft power <50.9 hp  
 NPSHre 29.2 ft

Hyd. eff. 68.8 %

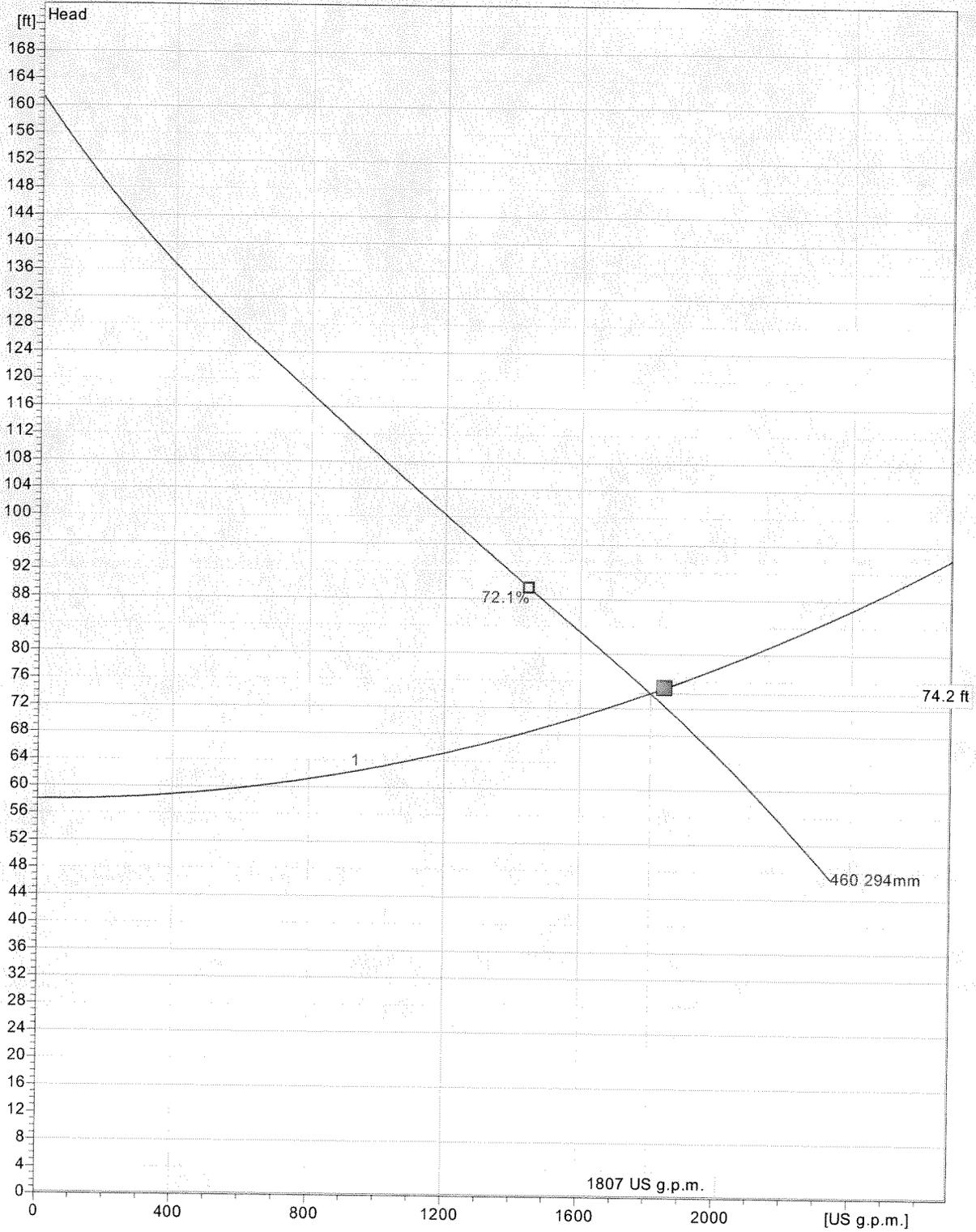
### Guarantee

ISO\_9906\_Grade\_2  
 Yes

Project	Project ID	Created by	Created on	Last update
			2013-06-12	

# NT 3202 HT 3~ 460

## Duty Analysis



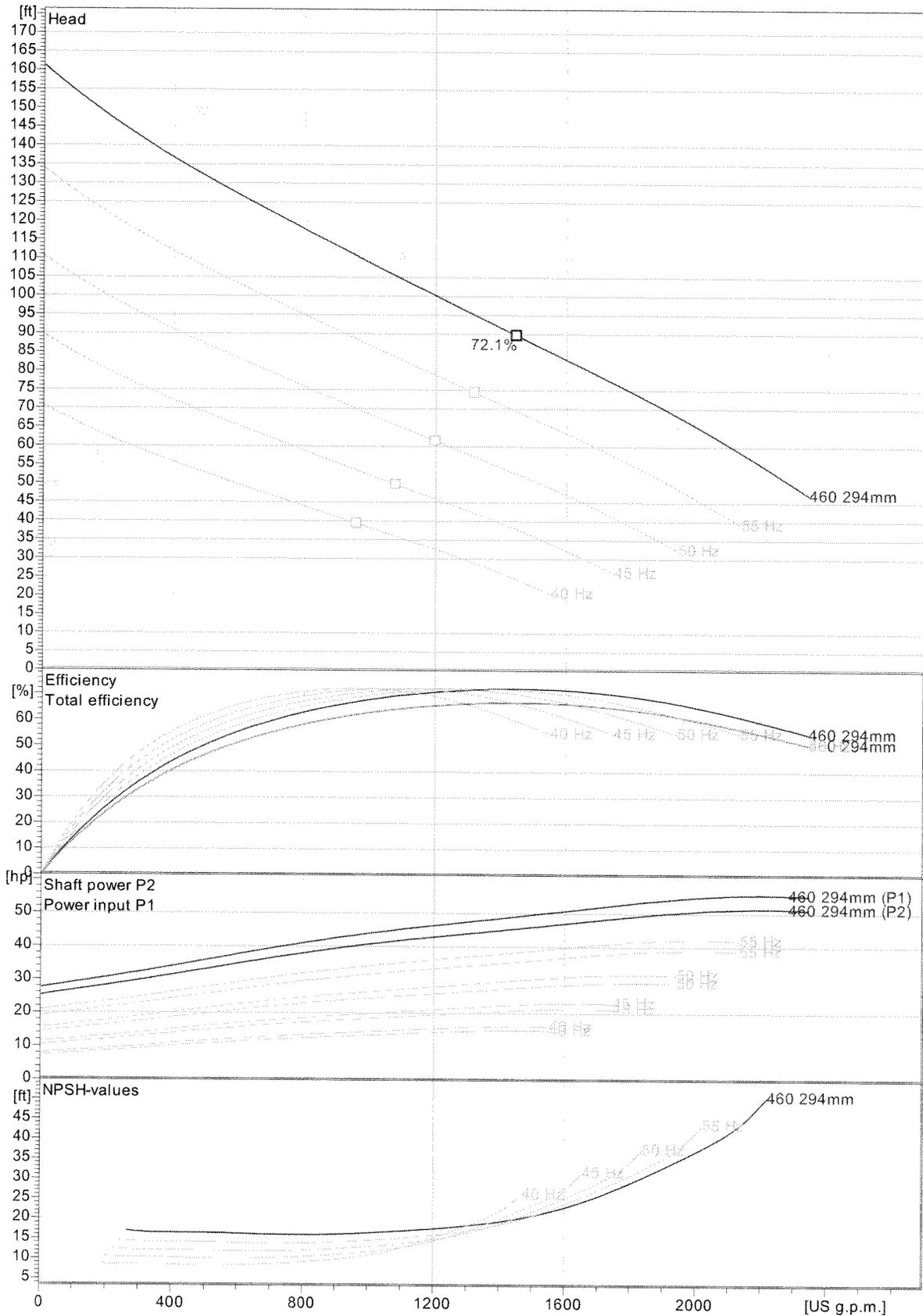
Curve according to: ISO 9906 grade 2 annex 1 or 2

Pumps running /System	Individual pump			Total					
	Flow	Head	Shaft power	Flow	Head	Shaft power	Hyd eff.	Specific energy	NPSHre
1	1810 US g.p.m.	74.2 ft	49.1 hp	1810 US g.p.m.	74.2 ft	49.1 hp	69.2 %	366 kWh/USMG	29.4 ft

Project	Project ID	Created by	Created on	Last update
			2013-06-12	

# NT 3202 HT 3~ 460

## VFD Curve

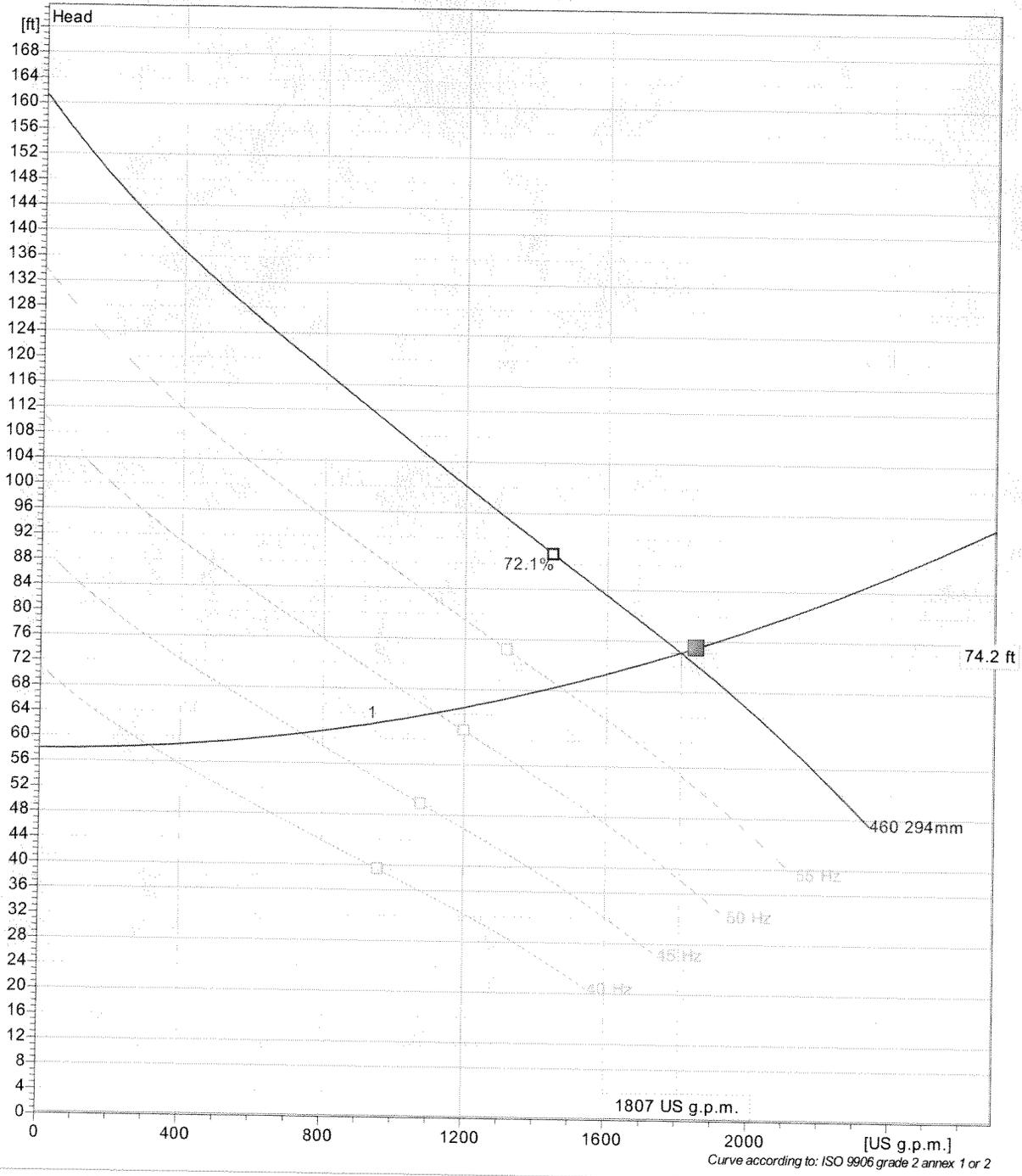


Curve according to: ISO 9906 grade 2 annex 1 or 2

Project	Project ID	Created by	Created on	Last update
			2013-06-12	

# NT 3202 HT 3~ 460

## VFD Analysis



Curve according to: ISO 9906 grade 2 annex 1 or 2

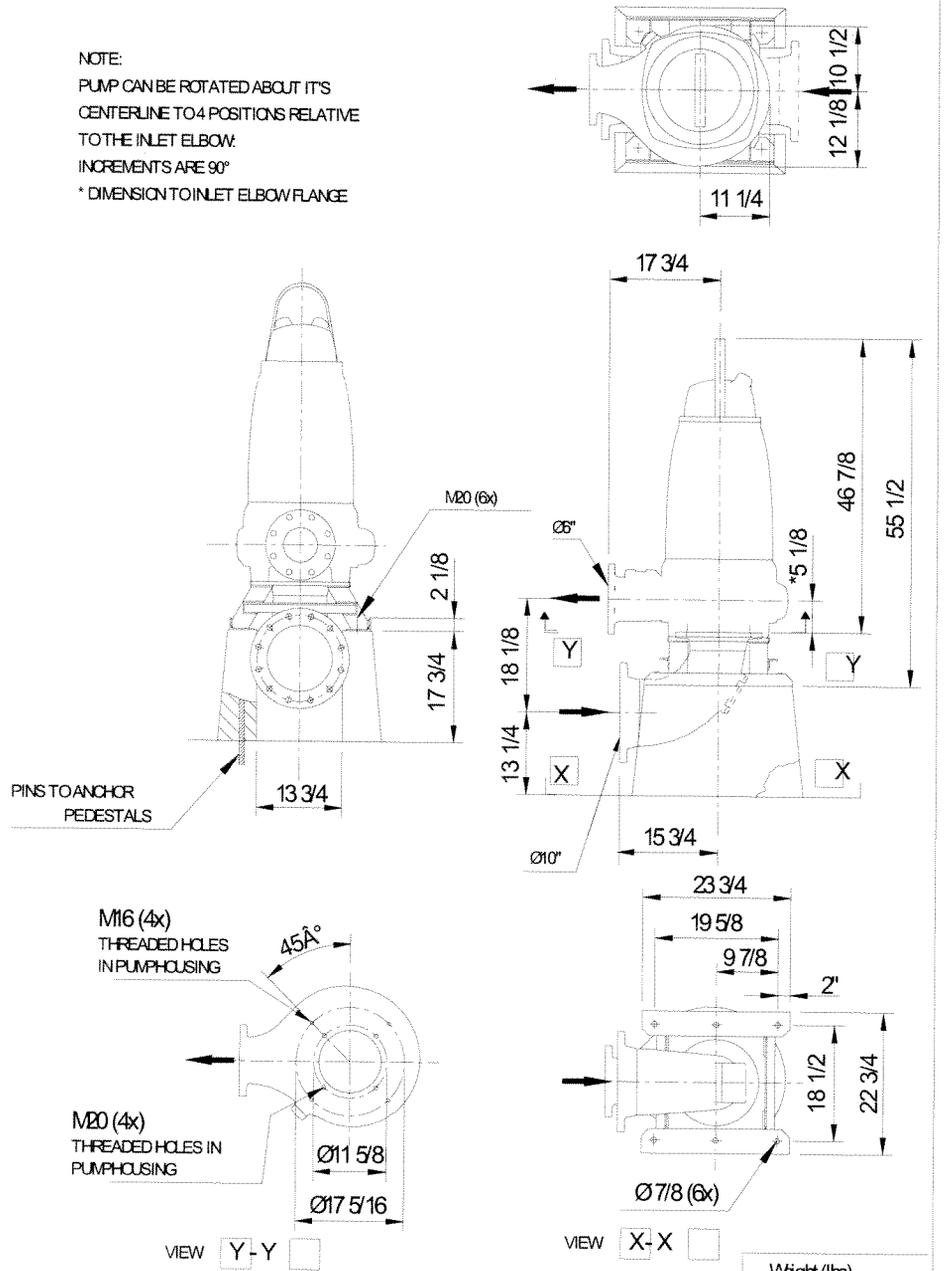
Pumps running /System	Individual pump				Total						
	Frequency	Flow	Head	Shaft power	Flow	Head	Shaft power	Hyd eff.	Specific energy	NPSHre	
1	60 Hz	1810 US g.p.m.	74.2 ft	49.1 hp	1810 US g.p.m.	74.2 ft	49.1 hp	69.2 %	366 kWh/US MG	29.4 ft	
1	55 Hz	1470 US g.p.m.	68.7 ft	35.6 hp	1470 US g.p.m.	68.7 ft	35.6 hp	71.6 %	326 kWh/US MG	20 ft	
1	50 Hz	1120 US g.p.m.	64.2 ft	25.2 hp	1120 US g.p.m.	64.2 ft	25.2 hp	71.9 %	305 kWh/US MG	14 ft	
1	45 Hz	740 US g.p.m.	60.7 ft	16.8 hp	740 US g.p.m.	60.7 ft	16.8 hp	67.7 %	314 kWh/US MG	10.3 ft	
1	40 Hz	311 US g.p.m.	58.5 ft	9.47 hp	311 US g.p.m.	58.5 ft	9.47 hp	48.5 %	449 kWh/US MG	8.51 ft	

Project	Project ID	Created by	Created on	Last update
			2013-06-12	

**NT 3202 HT 3~ 460**  
 Dimensional drawing



NOTE:  
 PUMP CAN BE ROTATED ABOUT IT'S  
 CENTERLINE TO 4 POSITIONS RELATIVE  
 TO THE INLET ELBOW.  
 INCREMENTS ARE 90°  
 \* DIMENSION TO INLET ELBOW FLANGE



Weight (lbs)
Total incl. stand
1390

AUTOCAD DRAWING	Dimensional dwg FT, NT 3202 HT Ø10"/Ø8"	Drawn by NK	Checked by KA	Date 110224
		Scale 6665000	Reg no 5399	6

Project	Project ID	Created by	Created on 2013-06-12	Last update
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*Xylem Water Solutions USA, Inc.  
Flygt Products*

2630 North Marine Dr  
Portland, Oregon 97217  
Tel (503) 240-1980  
Fax (503) 240-3445

June 12, 2013

CITY OF NEWPORT  
169 SE COAST HIGHWAY  
NEWPORT OR 97366

Quote # 2013-POR-0051

Re: Newport, City of - Nye Beach-try and buy

Xylem Water Solutions USA, Inc. is pleased to provide a quote for the following Flygt equipment.

Qty	Description
1	Flygt Model NT-3202.095 6" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 60 HP 1750 RPM motor, 460 impeller, 1 x 50 Ft. length of submersible cable, FLS leakage detector, volute is prepared for Flush Valve
1	ELBOW, INLET DN200 X 10" ANSI+ CI
1	KIT, T-STAND 3202 HT
1	MINI-CASII/FUS 120/24VAC, 24VDC
1	SOCKET, 11-PIN BACK MOUNTING

**Option 2 - 6" Pump Price USD \$ 39,267.00**

**Total Project Price \$ 39,267.00**

Freight Charge \$ 785.00

**Total Project Price \$ 40,052.00**

\*lead time 8 to 10 weeks\*



**Incoterm:** 2 FCA/FOB - Free Carrier / Free on Board  
Factory

**Named Placed:** 02 - US WH/

Incoterms 2010 clarify responsibility for costs, risks, & tasks associated with the shipment of goods to the named place.

**Customer Acceptance:** Please sign and return this Quote, with your Purchase Order, as acceptance of the Quote contents and terms.

Signature: Ted Smith

Name:(please print) Ted Smith

Date: 6-25-13 PO#: \_\_\_\_\_

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

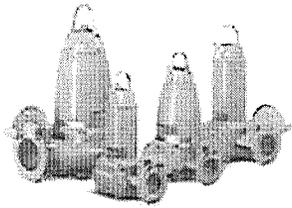
Sincerely,

*Dave Bobbett*

Dave Bobbett  
Sales Representative  
Phone: 503/290-2175  
Cell: 503/789-7330  
dave.bobbett@xyleminc.com

*Gina Goldbeck*

Gina Goldbeck  
Inside Sales Associate  
Phone: 503/240-2172  
gina.goldbeck@xyleminc.com



## Pump Clog-free Operations Guarantee Flygt Brand Solids-Handling Pumps Equipped With N-Technology

Flygt guarantees that its solids-handling pumps, when equipped with impellers utilizing the self-cleaning N-Technology will be free from clogging when pumping sewage and wastewater containing solids and debris normally found in domestic wastewater.

This guarantee is extended to the original owner for a period of 12-months from the date of start-up of the equipment by the local authorized Flygt representative or distributor.

Should the Flygt N-Pump impeller clog with typical solids and/or debris normally found in domestic wastewater during this period, Flygt shall reimburse the owner for reasonable cost to remove the pump, clear the obstruction and reinstall the affected pump unit.

Flygt reserves the right to inspect the pump station, pump units and possible modify the pump unit, if deemed necessary, to mitigate any further occurrence of clogging at no cost to the owner.

Ron Askin, Managing Director  
Xylem, Inc. – Water Solutions USA, Flygt Products

Date of Installation

Owner

Location/Project

Quantity / Model / Serial Number(s)

EXHIBIT C

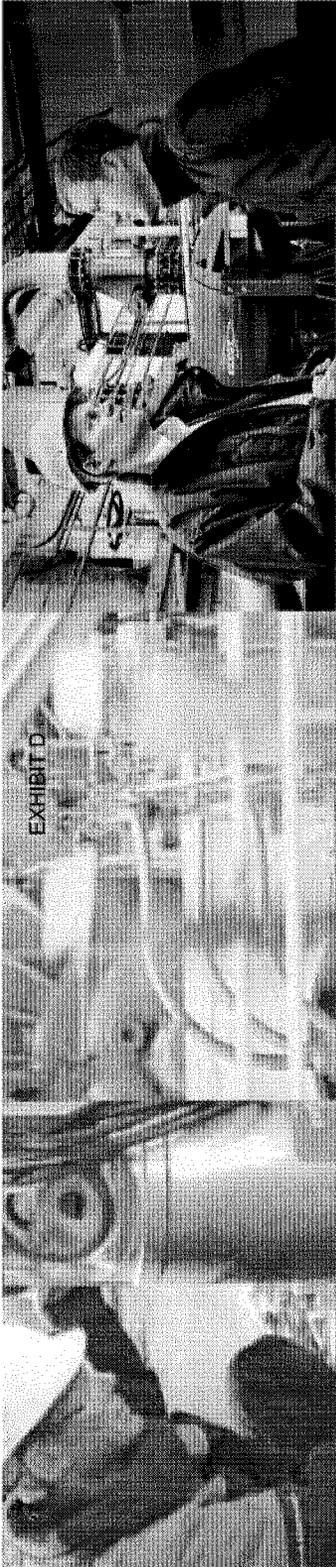


EXHIBIT D

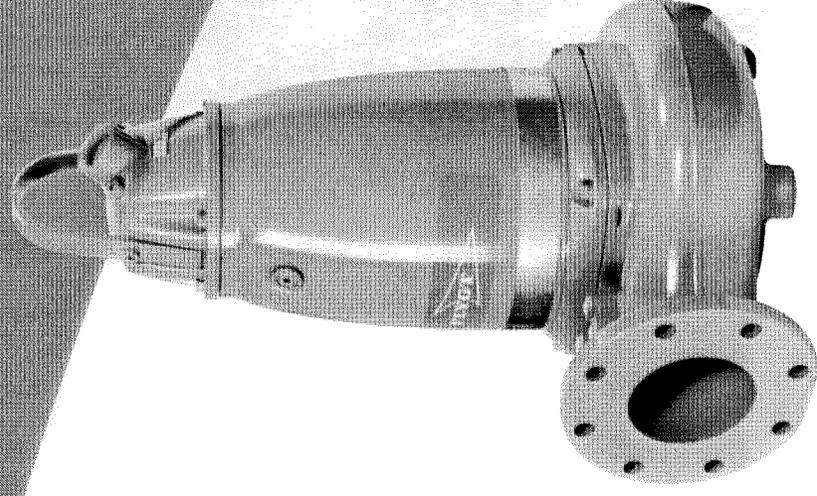
# Energy Consumption Reduced, Money Saved.

GUARANTEED SAVINGS OF 25% OR MORE.

## **Flygt N-Pumps are guaranteed to save 25% or more on energy consumption!**

Municipalities across the country are saving energy, money and hassles by replacing their old pumps with Flygt N-Pumps. The self-cleaning Flygt N-Pumps not only make clogging and breakdowns all but obsolete, they increase productivity. And since our N-Pumps are guaranteed to save at least 25% on energy consumption, you might also qualify for government Green Project Reserve Funds\*\*. In some states, local utilities have received fund to replace existing pumps! Check with your state officials to maximize your benefits and start saving now. Guaranteed!

Call 203-380-4826 or visit [flygtus.com](http://flygtus.com)



a xylem brand

\*See back for details.

\*\*As specified in USEPA Clean Water State Revolving Funds (CWSRFs).

# Guarantee FLYGT BRAND N-PUMPS TERMS AND CONDITIONS

## **Replace a competitor's non-clog, solids-handling pump with a Flygt N-Pump and you will use a minimum of 25% less energy for pumping. We guarantee it.**

This guarantee applies to all retrofit applications (lift stations and treatment plants) with solids-bearing liquids. If you do not see at least 25% in pump energy savings, we will refund the difference between the actual pump energy savings and the expected 25% savings for a 3-year period of operation.

### **Validating Savings In Lift Stations.**

After installing all new Flygt brand N-Pumps, record utility energy meter readings before and after a 3-month operational period. To calculate your energy savings, compare these readings to the energy usage at that station for the same 3-month period in a previous year. For an accurate comparison, the energy consumption of base load/ancillary equipment (including non-upgraded pumps) must be quantified. No process changes are permissible during the evaluation period.

### **Validating Savings In Treatment Plants.**

Before installing new Flygt brand N-Pumps, use a recording energy meter to record the energy consumption of the pump(s) you are replacing for a period of one month. After installation, record the energy consumption of the new pump(s) for one month. Comparing the two month-long readings will determine your energy savings. No process changes are permissible during the evaluation period.

### **How To Submit A Claim.**

If your validated energy savings is less than 25%, you can request a refund of the difference between the actual pump energy savings and the expected 25% savings for a 3-year period of operation. To submit a claim, send back-up documentation of the information outlined in the "Validating Savings" section above along with your name, contact information, name of your local Xylem salesperson, project name and address to the "Claims" address below. Also, include the manufacturer, model number, discharge size, rated motor horsepower, design flow and head of both the replaced pump(s) and your new Flygt brand N-Pump(s).

Data collection and presentation is the responsibility of the claimant. All claims must be submitted within 180 days from the installation of the new Flygt brand N-Pump. Any claims submitted after 180 days from the date of installation of the new Flygt brand N-Pump will not be considered.



Flygt is a brand of Xylem, whose 12,000 employees are addressing the most complex issues in the global water market.

[www.xylem.com](http://www.xylem.com)

Flygt Corporation  
14125 South Bridge Circle  
Charlotte, NC 28273  
Tel 704.409.9700  
Fax 704.295.9080  
[www.flygtus.com](http://www.flygtus.com)

**EXHIBIT E****ORS CHAPTER 279B PUBLIC CONTRACTING REQUIREMENTS  
FOR THE PURCHASE OF GOODS AND SERVICES**

- (1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor. ORS 279B.220(1).
- (2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- (3) Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted. ORS 279B.220(3).
- (4) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617. ORS 279B.220(4).
- (5) Contractor agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
- (6) Contractor shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. ORS 279B.230(1).
- (7) All subject employers working under the contractor are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126. ORS 279B.230(2).
- (8) Contractor shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29

USC 201, *et seq*). ORS 279B.235(3).

- (9) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work. ORS 279B.235(2).
- (10) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid. ORS 701.430.
- (11) The contract may be canceled at the election of City for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- (12) Contractor certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- (13) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors. ORS 279A.110.
- (14) As used in this section, "nonresident contractor" means a contractor that has not paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding submission of the bid for the contract, does not have a business address in this state, and stated in the bid for the contract that it was not a "resident bidder" under ORS 279A.120. When a public contract is awarded to a nonresident contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. ORS 279A.120.