CITY CLERK
ORIGINAL

C-8057
06/04/2012

Virnig & Sons, Inc.
SALES CONTRACT

AGREEMENT
This agreement exists between Virnig & Sons, Inc. ("Seller") and

Glendale Fire Department ("Buyer")
5800 West Glenn Drive, Suite 350
Glendale, AZ 85301
623-930-4411

Seller agrees to sell a Waterous CXVK 750-P with CAFS to Buyer in accordance with the terms and conditions contained below and Side Mount Module Specifications dated 12/28/2011, attached as Exhibit A. This agreement will not be binding until it is accepted in writing by both the Buyer and Seller.

TERMS OF PAYMENT

QTY.	MODEL	PRICE	EXTENSION
1	Waterous CXVK 750-P with CAFS	$35,000.00	$35,000.00
1	Trade allowance Pierce Utility Vin# IHTSDADR21H351395	-35,000.00	-35,000.00
	Extended Price	$0	$0

Price is exclusive of taxes.

If the selling price is subject to any tax, the tax added would be that which is prevailing at the time of delivery, unless the proper tax exemption certificate has been duly signed by the proper authority.

Buyer agrees to pay Seller the extended price of shown above. A credit of $35,000.00 is included in the extended price above for the trade-in allowance for a 2000 Pierce Air Utility Vehicle ("Trade-In Vehicle") to be furnished by Glendale Fire Department upon execution of this contract.

Buyer agrees to pay Seller the extended price of $0 for the completed unit. Total sum shall be paid to Seller at the point of delivery. Delivery shall be defined as the point of time when the Buyer assumes physical possession of the apparatus.

Under no circumstances will the vehicle(s) be placed into service until the full payment has been received by Seller. No payments shall be made to any Seller Sales Representative except on presentation, in writing, of an express power of attorney, executed by an officer of Seller, authorizing payment to the Sales representative on behalf of Seller. If the terms of payment have not been met, the vehicle must be fully insured at the time of delivery and Seller may charge the Buyer the maximum legal interest rate on the unpaid balance. Seller is hereby granted a purchase money security interest in the vehicle and shall retain all rights of an unpaid seller and a secured party under the Uniform Commercial Code until the contract price has been paid in full. If more than one vehicle is covered by this contract and the vehicles are shipped at different dates, the above-terms of payment shall apply to each vehicle as a total cost per unit. Notwithstanding any other provision, the contract price is deemed paid in full at the time of delivery of the Trade-In Vehicle to Seller.

ACCEPTANCE
Seller agrees to sell and the Buyer agrees to purchase the Waterous CXVK 050-P with CAFS, along with the equipment described in the Side Mount Module Specifications dated 12/28/2011, as set forth in Exhibit A and incorporated herein, together referred to as "the unit."

DELIVERY
Delivery of the unit shall be F.O.B. Glendale, Arizona within 300 days of the date the last party has executed this sales contract. Seller shall not be liable for damages arising from its failure to make or delay in making delivery because of fire, flood, strikes, riot, chassis shortage, accidents, Acts of God, chassis or other supplier delays, or any circumstances or other causes beyond Seller's control. In the event delivery is delayed for more than 60 days, Buyer may, at its sole discretion, agree to a new delivery date or demand payment of $35,000.

ASSIGNMENT
The rights and obligations of the Buyer as outlined by this agreement shall not be assigned or transferred without the prior written consent of Seller. Seller may assign to any affiliate, its parent company, or its subsidiaries, any ad all of its rights and obligations as outlined by this agreement, but shall advise the Buyer, in writing, of any such transfer.

GOVERNING LAW
This agreement shall be construed and interpreted and the law of the State of Arizona shall govern its performance.

IMMIGRATION LAW COMPLIANCE

A. Seller, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

C. City of Glendale ("City") retains the legal right to inspect the papers of Seller or subcontractor employee who performs work under this Agreement to ensure that Seller or any subcontractor is compliant with the warranty under subsection (A) above.

D. City may conduct random inspections, and upon request of the City, Seller shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Seller agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.

E. Seller agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Seller also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

F. Seller's warranty and obligations under this Section to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.

G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

PROHIBITIONS
Seller certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

CONFLICTS
This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

AMENDMENT
No modification, alteration, addition, or change in the terms hereof shall be binding on either party, unless submitted in writing and executed by duly authorized representatives of Seller and the Buyer. Amendments may require approval by the Glendale City Council.

WARRANTY
The Waterous CXVK 750-P with CAFS is sold by Seller with the manufacturer's (Waterous') Conditional 5-year Warranty Policy, as set forth in Exhibit B and incorporated herein.

DISCLAIMER OF CONSEQUENTIAL DAMAGES
Seller expressly disclaims any liability for consequential or incidental damages which may be sustained by the Buyer, including but not limited to those arising from the use, inability to use, maintenance or repair of the apparatus, whether under theories of breach of express or implied warranty, negligence, strict liability, or otherwise.

CANCELLATION
This sales contract is subject to cancellation by the Buyer only upon payment to Seller of reasonable cancellation charges, which shall take into account expenses already incurred and commitments made by Seller that may not be cancelled by Seller.

COMPLETE AGREEMENT
This sales contract shall cancel and supersede any and all prior agreements, understandings, arrangements, promises, representations, warranties, and/or any contract of any form or nature whatsoever, whether oral or in writing and whether express or implied, which may have been entered into prior to the execution hereof between the parties, their officers, directors, or employees as to the subject matter hereof. Neither of the parties hereto has relied upon any oral representation given to it by any representative of the other party. This agreement represents a complete and exclusive statement of terms of the transactions between Buyer and Seller.

NOTICES
Any notices required to be given under this Agreement are deemed to be properly served if sent by United States mail, postage-paid, or hand-delivered to the parties at the following addresses:

To Glendale:

Glendale Fire Chief
City of Glendale
5800 West Glenn Drive, Suite 350
Glendale, Arizona 85301

To Virnig & Sons, Inc.:

Michael Virnig
24881 Alicia Parkway E353
Laguna Hills CA-92653

with a copy to:

Glendale City Attorney
5850 West Glendale Avenue, #450
Glendale, Arizona 85301

AUTHORIZATION

The parties to this Agreement hereby designate the following as representatives for communications regarding this sales contract. Notwithstanding this designation, any formal or official communications or notices shall be made as set forth in the preceding section:

Michael Virnig Phone: (562) 587-1600

WAYNE SMITH Phone: (623) 930-4411

EXHIBITS

Exhibit A: Side Mount Module Specifications dated 12/28/2011
Exhibit B: Waterous Conditional 5-year Warranty Policy

IN WITNESS WHEREOF, the Seller and the Buyer have caused this agreement to be executed by their duly authorized representatives as of the date set forth by each.

Seller:

VIRNIG & SONS, INC.

Michael Virnig, President

Dated: 5-31-2012

Buyer:

CITY OF GLENDALE, an Arizona municipal corporation

Ed Beasley, City Manager

Dated: 6.4.12

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall, City Attorney

Side Mount Module Specifications 12/28/2011
Prepared by Ray Frey

42"Side mount module WITH CAFS
CXVK 750 GPM
750-150-P
Ok to pump light
6061 extruded aluminum pump house
Powder coated aluminum pump panels black
NFPA knurled aluminum treadplate running boards
Grommet mounted ground lights
(4) Switched exterior pump panel lights
(2) Internal pump house lights with integrated push button switches
Vertically hinged RH side access door
Horizontally hinged operators panel
4 point elastomeric pump house mounting
3/8" steel sub frame thick powder coated
4.5" Master Gauges
2.5" Discharge Gauges
FRC Throttle Excel
FRC Water gauge
FRC Foam Gauge
NFPA test port bezel assembly
¾" ¼ turn bleeder valves for all connected hose discharges
Trident master drain manual control
Waterous VPOS primer
Waterous discharge relief valve panel controled
Passivated 304 stainless steel discharge manifolds
(1) TFT Intake relief valve
(2) 5" Intakes
(1) 2.5" LH auxiliary intake with 2.5" Elkhart valve
(1) 2.5" LH discharge with 2.5" Elkhart valve
(1) 2.5" RH discharge with 2.5" Elkhart valve and manual air valve control (CAF capable)
(1) 2.5" Rear discharge with 2.5" Elkhart valve and manual air valve control (CAF capable)
(2) 1.5" swivel Crosslay discharges with 2" Elkhart valves and manual air valve control (CAF capable)
(1) 2" Front turret discharge with 2" Elkhart valve electric UICS valve control (CAF capable) controller ship loose for in cab use as flow control
(1) 1.5" Hose Reel discharge with 1.5" Elkhart valve and air actuator control.
NO HOSE REEL PROVIDED (Foam capable)
(1) 2" Tank fill with 2" Elkhart valve W/ Victaulic adapter
(1) 3" tank to pump with Elkhart 3" valve
(2) 5" chrome plated long handle steamer caps
(4) 2.5" chrome plated caps

(1) 2.5" chrome plated plugs
(1) Auxiliary ¼" NPT air outlet with ¼ turn valve
(1) Aquis 2.5 Class-A foam system
Three (3) days of operational instruction at customer facility on system operation after delivery.

CONDITIONAL *5-YEAR* WARRANTY POLICY

WATEROUS warrants, to the original Buyer only, that products and parts manufactured by WATEROUS will be free from defects in material and workmanship under normal use and service for a period of five (5) years from the date the product is first placed in service, or five and one-half (5-1/2) years from the date of shipment by Waterous, whichever period shall be the first to expire; provided the Buyer notifies WATEROUS, in writing, of the defect in said product within the warranty period, and said product is found by WATEROUS to be nonconforming with the aforesaid warranty. When required in writing by WATEROUS, defective products must be promptly returned by Buyer to WATEROUS at WATEROUS' plant at South St. Paul, Minnesota, or at such other place as may be specified by WATEROUS, with transportation and other charges prepaid. A Returned Material Authorization (RMA) is required for all products and parts and may be requested by phone, fax or mail. The aforesaid warranty excludes any responsibility or liability of WATEROUS for:

(a) damages or defects due to accident, abuse, misuse, abnormal operating conditions, negligence, accidental causes, or improper maintenance, or attributable to written specifications or instructions furnished by Buyer;

(b) defects in products manufactured by others and furnished by WATEROUS hereunder, it being understood and agreed by the parties that the only warranty provided for such products shall be the warranty provided by the manufacturer thereof which, if assignable, WATEROUS will assign to Buyer, if requested by Buyer;

(c) any product or part, altered, modified, serviced or repaired other than by WATEROUS, without its prior written consent; and

(d) the cost of dismantling, removing, transporting, storing, or insuring the defective product or part and the cost of reinstallation.

(e) normal wear items (packing, strainers, filters, light bulbs, anodes, intake screens, mechanical seals, etc.).

This warranty is subject to WATEROUS' Conditions of Sale (Waterous Company form number F-2190) as currently in effect all of which are herein incorporated and by this reference made a part hereof.

All other warranties are excluded, whether express or implied by operation of law or otherwise, including all implied warranties of merchantability or fitness for purpose. WATEROUS shall not be liable for consequential or incidental damages directly or indirectly arising or resulting from the breach of any of the terms of this limited warranty or from the sale, handling, or used of any WATEROUS product or part. WATEROUS' liability hereunder, either for breach of warranty or for negligence, is expressly limited at WATEROUS' option:

(A) to the replacement at the agreed point of delivery of any product or part, which upon inspection by WATEROUS or its duly authorized representative, is found not to conform to the limited warranty set forth above, or

(B) to the repair of such product or part, or

(C) to the refund or crediting to buyer of the net sales price of the defective product or part.

Buyer's remedies contained herein are exclusive of any other remedy otherwise available to Buyer.

Waterous Company
125 Hardman Avenue South
South St. Paul, MN 55075 USA
www.waterousco.com

WATEROUS

Fire Pumps – Since 1886

F-2113

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