

AGREEMENT FOR PURCHASE AND SALE OF GOODS

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **18TH day of August, 2004**, by and between **Swartz Associates, Inc.**, whose address is **PO Box 110206, Naples, FL 34108** ("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 **an amount not-to exceed \$21,380.25** 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, 1100 Fleischmann Blvd., 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, attached hereto and made a part of as Exhibit "B" at 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: Dr. Robert E. Lee, 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:

Swartz Associates, Inc.
PO Box 110206
Naples, FL 34108
Attn: Dan Swartz

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 who 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: _____)

ATTEST:

By: _____
Tara A. Norman, City Clerk

Approved as to form and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

"SELLER":

Swartz Associates, Inc.

(Corporate Seal)

By: _____
Authorized Representative

"BUYER"

City of Naples, Florida

By: _____
Dr. Robert E. Lee, City Manager

Post Office Box 110206
 Naples, FL 34108
 239-597-9500
 Fax: 239-597-5152
 www.floridaplay.com
 E-mail: mail@floridaplay.com



Playground Equipment
 Site Furnishings
 Bleachers
 Pool Furniture
 Shade Structures
 Outdoor Athletic Equipment

10th St. S. Streetscape

QUOTATION # 05281

TO: City of Naples
 295 Riverside Circle
 Naples, FL 34102
 213-5002
 Fax: 213-5010

 Attn: Terry Fedelem

Date:	May 28, 2004
Ship Date:	Approx. 8-8 weeks ARO
Terms:	Net 15 Days
F.O.B.:	Destination
Salesperson:	Dan Swartz
Shipped Via:	CC

Quantity	Description	Unit Price	Total
	DuMor		
15	#94-60/S-2 6' All Steel Bench w/ Back, surface mount (Green)	\$ 1,038.00	\$ 15,570.00
5	#17-22/S-2 22 Gallon Steel Receptacle w/ flat cover, surf. mt (Green)	\$ 901.00	\$ 4,505.00
5	#130-20/S-2 2-3/8" OD Multi-Loop Bike Rack, surface mount (Green)	\$ 250.00	\$ 1,250.00
			\$ 21,325.00
	Less 7% Discount (per Manatee Co. S.B. Bid #04-0054-ML)		\$ (1,482.75)
			\$ 19,832.25
	Shipping & Handling (\$30 cwo)		\$ 1,548.00
	TOTAL PRICE		\$ 21,380.25
<p>Price based on Manatee Co. S.B. Bid #04-0054-ML</p> <p>Price does not include off-loading, assembly or installation.</p> <p>Thank you.</p>			

STANDARD WARRANTY

ALL PRODUCTS MANUFACTURED BY DuMOR, INC., ARE WARRANTIED AGAINST DEFECT IN MATERIALS AND/OR WORKMANSHIP AND IN ACCORDANCE WITH OUR PUBLISHED SPECIFICATIONS. DuMOR, INC., FURTHER WARRANTS OUR PRODUCTS AS FOLLOWS:

- LIMITED TWENTY-YEAR WARRANTY AGAINST STRUCTURAL FAILURE OF ALL STEEL BENCH FRAMES OR COMPLETE STEEL BENCH ASSEMBLIES, TABLE FRAMES, AND LITTER RECEPTACLE FRAMES.
- LIMITED FIVE-YEAR WARRANTY AGAINST STRUCTURAL FAILURE OF DOUGLAS FIR, REDWOOD, WESTERN RED CEDAR, AND IPE,
- LIMITED TWENTY-YEAR WARRANTY AGAINST STRUCTURAL FAILURE OF ALL CAST IRON BENCH SUPPORTS
- LIMITED TWENTY-YEAR WARRANTY AGAINST STRUCTURAL FAILURE OF RECYCLED PLASTIC--IT IS FURTHER WARRANTIED NOT TO ROT, SPLIT, CRACK, OR SPLINTER DURING THIS PERIOD
- LIMITED ONE-YEAR WARRANTY ON ANY ITEM NOT COVERED ABOVE

THE ABOVE WARRANTIES COMMENCE ON THE DATE OF INVOICE ISSUED FROM DuMOR, INC. SHOULD ANY FAILURE OCCUR WITHIN THE WARRANTY PERIOD, DuMOR, INC., SHALL, UPON WRITTEN NOTIFICATION, CORRECT THE PART OR PARTS EITHER BY REPAIRING THE DEFECTIVE PART OR PARTS OR BY SUPPLYING A NEW PART OR PARTS WITHIN 60 DAYS OF RECEIPT OF THE WRITTEN NOTIFICATION. DuMOR, INC., SHALL, AT ITS EXPENSE, DELIVER THE REPAIRED OR NEW PART(S) TO THE JOB SITE; HOWEVER, DuMOR, INC., SHALL NOT BE RESPONSIBLE FOR PROVIDING LABOR OR INCURRING THE COST OF LABOR TO REMOVE THE DEFECTIVE PART OR PARTS AND INSTALL ANY REPAIRED OR NEW PART OR PARTS. ALL REPLACEMENT PARTS SHALL BE GUARANTEED FOR THE BALANCE OF THE ORIGINAL WARRANTY PERIOD.

THE WARRANTY IS VALID ONLY IF THE PRODUCTS HAVE BEEN ASSEMBLED AND INSTALLED AS PER DuMOR, INC., INSTRUCTIONS PROVIDED WITH EACH SHIPMENT AND IF THE PRODUCTS HAVE BEEN PROPERLY MAINTAINED AND INSPECTED ANNUALLY. THIS WARRANTY DOES NOT COVER CLAIMS FOR ITEMS THAT HAVE BEEN SUBJECT TO MISUSE, NEGLIGENCE, ACCIDENT, OR VANDALISM OR THAT HAVE BEEN MODIFIED, ALTERED, OR REPAIRED BY ANYONE OTHER THAN DuMOR, INC.; ITS AUTHORIZED REPRESENTATIVE; OR OTHERS DESIGNATED BY DuMOR, INC., TO MODIFY, ALTER, OR REPAIR THE PRODUCT.

THIS WARRANTY DOES NOT COVER COSMETIC ITEMS, NOR DOES IT COVER CLAIMS DUE TO CHECKING, SPLITTING, AND WARPING WHICH ARE NATURAL TENDENCIES OF WOOD PRODUCTS. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS. IN ADDITION, NO OTHER WARRANTY, ORAL, WRITTEN, OR IMPLIED, MAY BE SUBSTITUTED FOR THE WARRANTY STATED ABOVE. TO THE EXTENT PERMITTED BY LAW, DuMOR, INC., SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.

ALL CLAIMS MADE UNDER THE TERMS OF THIS WARRANTY MUST BE RECEIVED IN WRITING ALONG WITH A COPY OF THE ORIGINAL INVOICE. CLAIMS MUST BE SENT TO DuMOR, INC., P.O. BOX 142, MIFFLINTOWN, PA 17059-0142.