

AGREEMENT FOR PURCHASE AND SALE OF GOODS

THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement") is made this **19TH day of January, 2005**, by and between **Elxsi d/b/a Cues.**, whose address is **3600 Rio Vista Avenue, Orlando, FL 32805** ("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 of \$134,727.00** 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, 370 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, 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:

Elxsi d/b/a Cues
3600 Rio Vista Avenue
Orlando, FL 32805
Attn: Paul Stenzler, Vice President

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: _____)

"SELLER":

Elxsi d/b/a Cues.

(Corporate Seal)

By: _____
Authorized Representative

ATTEST:

By: _____
Tara A. Norman, City Clerk

"BUYER"

City of Naples, Florida

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

Approved as to form and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

BID SCHEDULE

FURNISH ONE SEWER VIEWING TV TRUCK, AS SPECIFIED.
PRICE TO INCLUDE DELIVERY TO THE CITY OF NAPLES

\$ 134,727.00

MAKE AND MODEL OFFERED: 2005 Chevrolet/CUES

TIME OF DELIVERY: 90-120 DAYS ARO.

PROMPT PAY TERMS: N/A % N/A DAYS.

YOU MUST SUPPLY ALL WARRANTY INFORMATION WITH YOUR BID.



Specifications for: City of Naples, FL
Equipment to be Supplied: Sewer Viewing TV Truck

CUES STANDARD WARRANTY

CUES ("CUES") warrants that all parts, components, and equipment manufactured by CUES shall be free from defects in material and workmanship under normal use and service for which it was intended for a period of twelve (12) months from the date of shipment of materials by CUES to the purchaser. CUES' obligation under this warranty is limited, at CUES' option, to replacing or repairing, free of charge, any defective materials returned, freight prepaid, to the CUES designated service facility. For all warranty claims, the materials must be returned in accordance with CUES Material Return Policy.

Major items of equipment, such as vehicles, generators, etc., furnished, but not manufactured by CUES, will be covered only under the warranty of the third party manufacturer of such equipment. Expendable parts, such as light bulbs, fuses, connectors, etc., are excluded from this warranty.

Purchaser must notify CUES of a breach of warranty not later than the last day of the warranty period; otherwise, such claims shall be deemed waived.

CUES does not warrant the materials to meet the requirements of the safety codes of any federal, state, municipal or other governmental or administrative jurisdiction. Purchaser assumes all risk and liability whatsoever resulting from the use of its products, whether used singly or in combination with other products, machines or equipment.

This Warranty shall not apply to any materials, or parts thereof, which have; (a) been repaired or altered by anyone other than CUES without CUES' written consent; (b) been subject to misuse, abuse, negligence, accident, or damage; (c) not been installed or operated in accordance with CUES' printed instructions, or; (d) been operated under conditions exceeding or more severe than those set forth in the specifications of design tolerance of the equipment.

THIS WARRANTY AND THE OBLIGATION AND LIABILITIES OF CUES HEREUNDER ARE EXCLUSIVE AND IN LIEU OF (AND PURCHASER HEREBY WAIVES) ALL OTHER WARRANTIES, GUARANTEES, REPRESENTATIONS, OBLIGATIONS, OR LIABILITIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS WHETHER OR NOT OCCASIONED BY CUES' NEGLIGENCE.

CUES SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING, DIRECTLY OR INDIRECTLY, FROM THE USE OR LOSS OF USE OF THE MATERIALS, OR FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, ECONOMIC LOSSES, LOSS OF PROFITS, LOSS OF BUSINESS, OR LOSS OF BUSINESS OPPORTUNITY. Without limiting the generality of the foregoing, this exclusion from liability embraces Purchaser's expenses for downtime or for making up downtime, damages to property, and injury to or death of any persons.

CUES neither assumes nor authorizes any person (including employees, agents, or representatives of CUES) to assume for it any other liability, guarantee, or warranty in connection with the sale or use of the materials, and no oral agreements, warranties, or understandings exist collateral to or affecting this warranty.

This warranty shall not be extended, altered, modified, or waived except by a written instrument signed by CUES.