

**FIRST AMENDMENT TO THE PURCHASE  
AND SALE OF GOODS AGREEMENT**

**THIS FIRST AMENDMENT** (the “First Amendment”) to **the Purchase and Sale of Goods Agreement** is made and entered into **this 15<sup>th</sup> day of March, 2006** by and between the CITY OF NAPLES, a Florida Municipal Corporation (the “City”), and **Hall-Mark Fire Apparatus, Inc.** (the Contractor”).

**W I T N E S S E T H**

**WHEREAS**, the City and the Contractor entered into that certain Agreement **for the purchase of a fire ladder truck dated 21<sup>st</sup> day of December , 2005 (Res. 05-11055)** (the “Original Agreement”) for the **City’s Police and Emergency Services Department** (‘Project’); and

**WHEREAS**, the parties desire to amend the Original Agreement by this First Amendment so that the **Contractor** will provide additional services pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. The above recitals are true and correct and are incorporated herein by this Reference.
2. The scope of services shall be amended in accordance with Exhibit “A” attached hereto and incorporated herein for the provision of additional services by the Contractor in **an amount not-to-exceed \$2,606.00 for additional options and equipment on the purchase of the Aerial Platform Fire Truck** (‘Project’).
3. The terms of this First Amendment shall control and take precedence over any and all terms, provisions and conditions of Original Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof. All of the other terms, provisions and conditions of Original Agreement, except as expressly amended and modified by this First Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.
4. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the City and the Contractor have caused this First Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

**CITY:**

**ATTEST:**

**CITY OF NAPLES, FLORIDA**

By: \_\_\_\_\_  
Tara Norman, City Clerk

By: \_\_\_\_\_  
Dr. Robert E. Lee, City Manager

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

**Hall-Mark Fire Apparatus, Inc.**

\_\_\_\_\_  
witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Amendment to agreement



PO Box 1770 • Ocala, Florida 34478  
 Office: 352-629-6305 • Fax: 352-629-2018  
 Toll Free: 1-800-524-6072

## FIRE APPARATUS PROPOSAL AND AGREEMENT

DATE: February 1, 2006

This proposal has been prepared for:

**City of Naples**  
**Chief Jim McEvoy**  
**355 Riverside Circle**  
**Naples, FL 34102**

Hall-Mark Fire Apparatus is pleased to offer the City of Naples Fire Department one (1) E-One LS98 95' Platform on a Cyclone II chassis, to be custom built and equipped per the attached components and equipment list.

Delivery will be F.O.B. Naples, FL and will be made approximately 210 days after receipt of an order at E-One in Ocala, FL. Terms of payment shall be C.O.D.

The current purchase price for the specified unit is as follows:

<b>Base Price of Apparatus per Attached Components List:</b>	<b>\$806,458.00</b>
<b>Equipment per Attached List:</b>	<b>\$ 28,171.00</b>
<b>Discount:</b>	<b>\$ (49,367.00)</b>
<b>Less Trade Ins</b>	<b>\$ (70,000.00)</b>
<b>TOTAL COST</b>	<b>\$715,262.00</b>
<b>½ % Discount For Prompt Payment-10 Days from delivery</b>	<b>\$ (3,576.00)</b>
<b>Final Cost Of Apparatus</b>	<b>\$711,686.00</b>

Note: Trade-Ins are: (1) 1984 95' Platform, (1) 1991 Pumper and (1) 2000 Rescue

TOTAL AMENDED AMOUNT NOT-TO-EXCEED \$2,606.00





## Statement of Warranty 1 YEAR STANDARD

Pubs #52046  
Sales #95-700

E-ONE (the "Company") warrants each new item of fire and rescue apparatus manufactured by it against defects in material and workmanship provided the apparatus is used in a normal and reasonable manner. This warranty is extended only to the original user-purchaser for a period of one year from the date of delivery to the original user-purchaser.

E-ONE'S obligation under this warranty is strictly limited to replacing or repairing, as the Company may elect, any part or parts of such apparatus which the Company's examination discloses to be defective in material or workmanship.

The company reserves the right to require any such repairs to be made either at a Company owned service facility or another approved service facility at the Company's option. Transportation cost to and from the servicing location are the responsibility of the user-purchaser.

The E-ONE warranty shall not apply to:

1. Major components or trade accessories such as purchased chassis, engines, tires, pumps, signaling devices, or batteries that have a separate warranty by the original manufacturer or to ancillary equipment used in fire fighting.
2. Normal adjustments and maintenance services.
3. Replacement of consumable parts including, but not limited to; filters, lubricants, belts, light bulbs, wiper blades, brake linings and brake pads.
4. Failure resulting from the apparatus being operated in a manner or for a purpose not recommended by E-ONE.
5. Any apparatus, which shall have been repaired, modified or altered in any way so as, in the Company's sole judgment, to have adversely affected the unit's stability or reliability.
6. Items subjected to misuse, negligence, accident or improper maintenance.
7. Loss of time or use of the vehicle, inconvenience or other incidental expenses.

Nothing contained in this warranty shall make E-ONE liable beyond the express limitations hereof, for loss, injury or damage of any kind to any person or entity resulting from any defect or failure in the vehicle.

To the extent permitted by law, THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

To the extent permitted by law, this warranty is also in lieu of all other obligations or liabilities on the part of E-ONE or the Seller, including liability for incidental and consequential damages.

E-ONE makes no representation that the vehicle has the capacity to perform any functions other than as contained in the Company's written literature, catalogs or specifications accompanying delivery of the vehicle.

No person or affiliated company representative is authorized to give any other warranties or to assume any other liability on behalf of E-ONE in connection with sale, service or repair of any apparatus manufactured by the Company.

E-ONE reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to change or improve previously manufactured products.

REV  
10/19/04



# Coverage

## Products Warranted

This warranty applies to new diesel Engines sold by Cummins and delivered to the first user on or after August 1, 2001, that are used in fire apparatus truck and crash truck\* applications in the United States\*\* or Canada.

## Base Engine Warranty

The Base Engine Warranty covers any failures of the Engine which result, under normal use and service, from a defect in material or factory workmanship (Warrantable Failure). This coverage begins with the sale of the engine by Cummins and continues for five years or 100,000 miles (160,935 kilometers), whichever occurs first, from the date of delivery of the Engine to the first user.

Additional coverage is outlined in the Emission Warranty section.

## Consumer Products

This warranty on Consumer Products in the United States is a **LIMITED** warranty. **CUMMINS IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.** Any implied warranties applicable to Consumer Products in the United States terminate concurrently with the expiration of the express warranties applicable to such products. In the United States, some states do not allow the exclusion of incidental or consequential damages, or limitations on how long an implied warranty lasts, so the limitations or exclusions herein may not apply to you.

**These warranties are made to all Owners in the chain of distribution and Coverage continues to all subsequent Owners until the end of the periods of Coverage.**

# Cummins Responsibilities

Cummins will pay for all parts and labor needed to repair the damage to the Engine resulting from a Warrantable Failure.

Cummins will pay for the lubricating oil, antifreeze, filter elements, belts, hoses and other maintenance items that are not reusable due to the Warrantable Failure.

Cummins will pay for reasonable labor costs for Engine removal and reinstallation when necessary to repair a Warrantable Failure.

Cummins will pay reasonable costs for towing a vehicle disabled by a Warrantable Failure to the nearest authorized repair location. In lieu of the towing expense, Cummins will pay reasonable costs for mechanics to travel to and from the location of the vehicle, including meals, mileage, and lodging when the repair is performed at the site of the failure.

# Owner Responsibilities

Owner is responsible for the operation and maintenance of the Engine as specified in Cummins Operation and Maintenance Manuals. Owner is also responsible for providing proof that all recommended maintenance has been performed.

Before the expiration of the applicable warranty, Owner must notify a Cummins distributor, authorized dealer or other repair location approved by Cummins of any Warrantable Failure and make the engine available for repair by such facility. Except for Engines disabled by a Warrantable Failure, Owner must also deliver the Engine to the repair facility. Locations in the United States and Canada are listed in the Cummins United States and Canada Sales and Service Directory.

Owner is responsible for the cost of lubricating oil, antifreeze, filter elements and other maintenance items provided during warranty repairs unless such items are not reusable due to the Warrantable Failure.

Owner is responsible for communication expenses, meals, lodging and similar costs incurred as a result of a Warrantable Failure.

Owner is responsible for non-Engine repairs and for "downtime" expenses, cargo damage, fines, all applicable taxes, all business costs and other losses resulting from a Warrantable Failure.

Owner is responsible for a \$100 (U.S. Dollars) deductible per each repair under this plan in the 3rd, 4th, and 5th years of base engine warranty. The deductible will not be charged during the first 2 years of the base engine warranty.



# Limitations

Cummins is not responsible for failures or damage resulting from what Cummins determines to be abuse or neglect, including but not limited to: operation without adequate coolants or lubricants; overfueling; overspeeding; lack of maintenance of lubricating, cooling or intake systems; improper storage, starting, warm-up, run-in or shutdown practices; unauthorized modifications of the Engine. Cummins is also not responsible for failures caused by incorrect oil or fuel or by water, dirt or other contaminants in the fuel or oil.

This warranty does not apply to accessories supplied by Cummins which bear the name of another company. Such non-warranted accessories include, but are not limited to: alternators, starters, fans, air conditioning compressors, clutches, filters, transmissions, torque converters, vacuum pumps, power steering pumps, fan drives and air compressors. Cummins branded alternators and starters are covered for the first two years from the date of delivery of the Engine to the first user, or the expiration of the Base Engine Warranty, whichever occurs first.

Failures resulting in excessive oil consumption are not covered beyond the duration of the coverage or 100,000 miles (160,935 kilometers) or 7000 hours from the date of delivery of the Engine to the first user, whichever of the three occurs first. Before a claim for excessive oil consumption will be considered, Owner must submit adequate documentation to show that consumption exceeds Cummins published standards.

Failures of belts and hoses supplied by Cummins are not covered beyond the first year from the date of delivery of the Engine to the first user or the duration of the warranty, whichever occurs first.

Parts used to repair a Warrantable Failure may be new Cummins parts, Cummins approved rebuilt parts, or repaired parts. Cummins is not responsible for failures resulting from the use of parts not approved by Cummins.

A new Cummins or Cummins approved rebuilt part used to repair a Warrantable Failure assumes the identity of the part it replaced and is entitled to the remaining coverage hereunder.

**CUMMINS DOES NOT COVER WEAR OR WEAROUT OF COVERED PARTS.**

**CUMMINS IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

**THIS WARRANTY AND THE EMISSION WARRANTY SET FORTH HEREINAFTER ARE THE SOLE WARRANTIES MADE BY CUMMINS IN REGARD TO THESE ENGINES. CUMMINS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OR OF**

## MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

# Emission Warranty

## Products Warranted

This emission warranty applies to new Engines marketed by Cummins that are used in the United States\*\* in vehicles designed for transporting persons or property on a street or highway. This warranty applies to Engines delivered to the ultimate purchaser on or after September 1, 1992.

## Coverage

Cummins warrants to the ultimate purchaser and each subsequent purchaser that the Engine is designed, built and equipped so as to conform at the time of sale by Cummins with all U.S. Federal emission regulations applicable at the time of manufacture and that it is free from defects in material or factory workmanship which would cause it not to meet these regulations within the longer of the following periods: (A) Five years or 100,000 miles (160,935 kilometers) of operation, whichever occurs first, as measured from the date of delivery of the Engine to the ultimate purchaser, or (B) The Base Engine Warranty.

If the vehicle in which the Engine is installed is registered in the state of California, a separate California Emission Warranty also applies.

## Limitations

Failures, other than those resulting from defects in material or factory workmanship, are not covered by this Warranty.

Cummins is not responsible for failures or damage resulting from what Cummins determines to be abuse or neglect, including, but not limited to: operation without adequate coolants or lubricants; overfueling; overspeeding; lack of maintenance of lubricating, cooling or intake systems; improper storage, starting, warm-up, run-in or shutdown practices; unauthorized modifications of the Engine. Cummins is also not responsible for failures caused by incorrect oil or fuel or by water, dirt or other contaminants in the fuel or oil.

Cummins is not responsible for non-Engine repairs, "downtime" expenses, cargo damage, fines, all applicable taxes, all business costs or other losses resulting from a Warrantable Failure.

**CUMMINS IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

\* Airport operated crash trucks and fire department operated trucks employed to respond to fires, hazardous material releases, rescue and other emergency-type situations.

\*\* United States includes American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.





## Limited Warranty

**EXPRESS WARRANTY:** Hale Products Inc. ("Hale") hereby warrants to the original buyer that products manufactured by it are free of defects in material and workmanship for two (2) years or 2000 hours usage whichever shall first occur. The "Warranty Period" commences on the date the original buyer takes delivery of the product from the manufacturer.

**LIMITATIONS:** HALE'S obligation is expressly conditioned on the Product being:

- Subjected to normal use and service.
- Properly maintained in accordance with HALE'S Instruction Manual as to recommended services and procedures.
- Not damaged due to abuse, misuse, negligence or accidental causes.
- Not altered, modified, serviced (non-routine) or repaired other than by an Authorized Service Facility.
- Manufactured per design and specifications submitted by the original Buyer.

**THE ABOVE EXPRESS LIMITED WARRANTY IS EXCLUSIVE. NO OTHER EXPRESS WARRANTIES ARE MADE. SPECIFICALLY EXCLUDED ARE ANY IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATIONS, THE IMPLIED WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE OR USE; QUALITY; COURSE OF DEALING; USAGE OF TRADE; OR PATENT INFRINGEMENT FOR A PRODUCT MANUFACTURED TO ORIGINAL BUYER'S DESIGN AND SPECIFICATIONS.**

**EXCLUSIVE REMEDIES:** If Buyer promptly notifies HALE upon discovery of any such defect (within the Warranty Period), the following terms shall apply:

- Any notice to HALE must be in writing, identifying the Product (or component) claimed defective and circumstances surrounding its failure.
- HALE reserves the right to physically inspect the Product and require Buyer to return same to HALE'S plant or other Authorized Service Facility.
- In such event, Buyer must notify HALE for a Returned Goods Authorization number and Buyer must return the Product F.O.B. within (30) days thereof.
- If determined defective, HALE shall, at its option, repair or replace the Product, or refund the purchase price (less allowance for depreciation).
- Absent proper notice *within* the Warranty Period, HALE shall have no further liability or obligation to Buyer therefore.

**THE REMEDIES PROVIDED ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE. IN NO EVENT SHALL HALE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE INCLUDING, WITHOUT LIMITATION, LOSS OF LIFE; PERSONAL INJURY; DAMAGE TO REAL OR PERSONAL PROPERTY DUE TO WATER OR FIRE; TRADE OR OTHER COMMERCIAL LOSSES ARISING, DIRECTLY OR INDIRECTLY, OUT OF PRODUCT FAILURE.**



**ELITE**



**Fire & Safety  
Equipment, Inc.**

**Lt. Deteso  
City of Naples F.D.  
Fax#213-4907**

**2-7-06**

4775 Mercantile Ave. #11  
Naples, Florida 34104  
**1-239-643-4140**  
**1-800-643-4104 FAX**  
E-Mail: elitefoam@aol.com  
Visit Our  
**Website: www.elite-fire.com**

To whom it may concern,

This letter is to inform the City of Naples F.D. that the Niedner fire hose you have been purchasing has (5) year warranty & (5) year pro-rate. Also the TFT (Task Force Tips ) nozzles,monitors, ldh appliances has a (5) year warranty on them as well.



Sincerely,

A handwritten signature in black ink that reads 'Jeffrey R. Benker'.

**Jeffrey R. Benker  
Vice President  
Cell#239-253-0247**