



PERFORM. LIKE NO OTHER.

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Pierce Manufacturing Inc., a Wisconsin corporation ("Pierce"), and City of Littleton, a municipal corporation of the State of Colorado ("Customer") is effective as of the date specified in Section 3 hereof.

1. Definitions.

- a. "**Product**" means the fire apparatus and any associated equipment manufactured or furnished for the Customer by Pierce pursuant to the Specifications.
- b. "**Specifications**" means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Pierce Proposal for the Product prepared in response to the Customer's request for proposal.
- c. "**Pierce Proposal**" means the proposal provided by Pierce attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. "**Delivery**" means the date Pierce is prepared to make physical possession of the Product available to the Customer.
- e. "**Acceptance**" The Customer shall have thirty (30) calendar days of Delivery to inspect the Product for substantial conformance with the material Specifications; unless Pierce receives a Notice of Defect within thirty (30) calendar days of Delivery, the Product will be deemed to be in conformance with the Specifications and accepted by the Customer.

2. Purpose. This Agreement sets forth the terms and conditions of Pierce's sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the later of the date it is signed and approved by Pierce's authorized representative or the date it is signed and approved by Customer's authorized representative pursuant to Section 22 hereof ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price, provided however that the terms of this Agreement, which are, by their nature, intended to survive termination, shall survive termination.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$1,263,446.00 ("Purchase Price"). Prices are in U.S. funds.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price to be paid by the Customer, provided Customer has been given notice of such Purchase Price increase and given the opportunity to terminate this Agreement or submit a Change Order. The foregoing shall control over any contrary provision in the Pierce Proposal or Customer Specifications notwithstanding anything in Section 21 to the contrary.

6. Agreement Changes. The Customer may request that Pierce incorporate a change to the Products or the Specifications for the Products by delivering a change order to Pierce; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit Pierce to evaluate the feasibility of such change ("Change Order"). Within seven (7) business days of receipt of a Change Order, Pierce will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. Pierce shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order unless such delay is caused by Pierce's negligence or breach of contract in connection with complying with the provisions of the Change Order. A Change Order is only effective when counter-signed by Pierce's authorized representative.

7. Cancellation/Termination. Except as otherwise provided in this Agreement, in the event this Agreement is cancelled or terminated by Customer before completion, Pierce may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by Pierce; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Pierce endeavors to mitigate any such costs through the sale of such Product to another purchaser; however Customer shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by Pierce upon sale of the Product to another purchaser, plus any costs incurred by Pierce to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 9 months of the Effective Date of this Agreement, F.O.B. Pierce's plant, Appleton, Wisconsin. Risk of loss shall pass to Customer upon Delivery. (b) Inspection and Acceptance. Upon Delivery, Customer shall have thirty (30) days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the material Specifications to furnish Pierce with written notice sufficient to permit Pierce to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by Pierce within thirty (30) days from the Notice of Defect. In the event Pierce does not receive a Notice of Defect within thirty (30) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer. If Customer provides a Notice of Defect, and the Product must be returned to Pierce's plant or anywhere other than Customer's facilities in Littleton, Colorado, Pierce shall pay for all costs of return and re-delivery back to Customer. Upon such re-delivery, the process for inspection and acceptance provided above shall begin anew.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; fax, or nationally-recognized private express courier:

Pierce Manufacturing, Inc.  
Director of Order Management  
2600 American Drive  
Appleton WI 54912  
Fax (920) 832-3080

Customer  
City of Littleton  
2255 West Berry Avenue  
Littleton, CO 80120  
303-449-9911

10. Standard Warranty. Any applicable Pierce warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by Pierce's authorized representative.

a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PIERCE, ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.

b. Exclusions of Incidental and Consequential Damages. In no event shall either party be liable for consequential, incidental or punitive damages incurred by the other party or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery or from negligence, or otherwise.

11. Insurance. Pierce maintains the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

Commercial General Liability Insurance:

Products/Completed Operations Aggregate: \$1,000,000  
Each Occurrence: \$1,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$25,000,000  
Each Occurrence: \$25,000,000

The Customer may request: (x) Pierce to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured for Commercial General Liability (subject to the terms and conditions of the applicable Pierce insurance policy); and (z) all policies to provide a 30 day notice of cancellation to the named insured. Execution of this Agreement shall be treated by Pierce as the request required herein.

12. Indemnity. Pierce shall defend, indemnify and hold harmless Customer from and against any and all claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Product infringes, violates or misappropriates any patent, copyright or other intellectual property right.

13. Force Majeure. Pierce shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Pierce's control which make Pierce's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

14. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) Pierce fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with Pierce. In the event of a uncured default by Pierce, Customer may terminate this Agreement and receive a full refund of any amounts paid.

15. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of Pierce until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of Pierce until the Purchase Price for that Product has been paid in full. In case of any default in payment, Pierce may take full possession of the Product, and any payments that have been made shall be applied as payment for the use of the Product up to the date of taking possession.

16. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venturer of or with the other.

17. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. Governing Law; Jurisdiction. Without regard to any conflict of law's provisions, this Agreement is to be governed by and under the laws of the state of Colorado.

19. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed shall not be applicable, unless accepted in writing by both parties' authorized representatives. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by both parties' authorized representatives.

21. Conflict. In the event of a conflict between the Customer Specifications and the Pierce Proposal, the Pierce Proposal shall control. In the event there is a conflict between the Pierce Proposal and this Agreement, the Pierce Proposal shall control.

22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by both parties' authorized representatives.

Accepted and agreed to:

**PIERCE MANUFACTURING, INC.**

Name: Angela Kiedy  
Title: Mgr-Order Mgt.  
Date: 12-22-2016

**CUSTOMER: City of Littleton**

DocuSigned by:  
Name: Mark Relp  
Title: Acting City Manager  
Date: 12/21/2016

APPROVED AS FOR FORM

DocuSigned by:  
[Signature]  
E7EE9346D4A84EC...

12/20/2016

EXHIBIT A

**PURCHASE DETAIL FORM**

Pierce Manufacturing, Inc.  
 Director of Order Management  
 2600 American Drive  
 Appleton WI 54912  
 Fax (920) 832-3080

Date: 12/07/2016

Customer Name: City of Littleton

Quantity	Chassis Type	Body Type	Price per Unit
1	Velocity	100' Platform	\$1,263,446.00
			\$
			\$
			\$
			\$

A \$38,000.00 discount for 100% pre-payment if paid in net 30 days of signed contract. Balance due after discount \$1,225,446.00

Warranty Period: All Standard Warranties.

Training Requirements: See proposal dated 12/07/2016

Other Matters: Performance bond will be provided.

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any Pierce available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: Balance due \$1,225,446.00 in Net 30 Days of signed contract.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF 12/07, 2016 BETWEEN PIERCE MANUFACTURING INC. AND City of Littleton WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED BY PIERCE MANUFACTURING INC. HEREIN.

**EXHIBIT B**

**WARRANTY**

SEE PROPOSAL NUMBER 745 DATED 12/07/2016 BY FRONT RANGE FIRE APPARATUS FOR CITY OF LITTLETON, LITTLETON, COLORADO FOR ALL APPLICABLE WARRANTIES.