



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

October 6, 2016

City Council President Linda M. Morad. and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

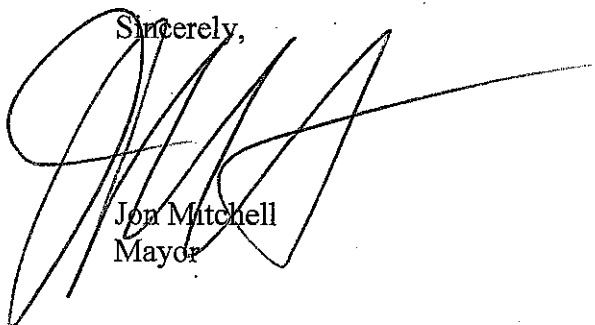
I am requesting your approval of the attached Order authorizing the City to enter into a capital lease for the purchase of two replacement pumper trucks for the City's Fire Department.

One focus of the City's Capital Improvement Program lies with a scheduled replacement plan for capital vehicles. Included in the plan for FY 2017 is \$600,000 for the replacement of Engine #5, which was originally placed into service 15 years ago. Earlier this year, the City was forced to condemn Engine #9, which is 14 years old, due to excessive corrosion. As a result, there is an operational need to accelerate the replacement of this vehicle and increase the procurement to two pumper trucks. The current Engine #5 will be subsequently moved to the reserve fleet, which will allow the permanent retirement of a pumper which dates to 1988. As financing costs will not be incurred until delivery, there will be no impact on the City budget until FY 2018.

The attached order will authorize the City to enter into an eight year lease agreement at an extremely favorable interest rate. This purchase, when combined with the acquisition of two pumpers and a ladder truck over the past several years, will reduce the average age of the City's front line fleet to 7.9 years, a reduction of more than five years since 2013, and will significantly enhance operational readiness. The Capital Improvement Program has allowed us to address this long-deferred need in a fiscally responsible manner.

Thank you for your consideration of this important request.

Sincerely,



Jon Mitchell
Mayor



CITY OF NEW BEDFORD

CITY COUNCIL

October 13, 2016

ORDER

ORDERED, that the City of New Bedford is hereby authorized to enter into an eight (8) year lease with Pierce Manufacturing, Inc., for the purchase of two (2) Pierce Arrow XT Pumpers. Submitted for City Council approval in accordance with M.G.L. c.30B, Section 12 (b) for contracts in excess of three years' duration.



FINANCIAL SOLUTIONS



Tax Exempt Lease Purchase

SALES ORGANIZATION: **Minuteman - Paul** Contact information:

LESSEE: **City of New Bedford** Tuesday, September 27, 2016

TYPE OF EQUIPMENT: **Two (2) Pierce Arrow XT Pumps** Kim Simon

EQUIPMENT COST: **\$1,272,468.00** Locator: **B3-B230-05-07**

CUSTOMER DOWNPAYMENT: **\$0.00** 155 East Broad St

TRADE-IN: **\$0.00** Columbus, OH 43215

DELIVERY TIME: **Std delivery** P: (800) 820-9041, ext. 1

PAYMENT MODE: **Annual In-Arrears** M: (614) 670-3994

FIRST PAYMENT DUE DATE: **1 Year After Lease Commencement** Fax: (800)-678-0602

LEASE COMMENCEMENT DATE: **Upon contract signing with Pierce** Kim.simon@pnc.com

Term	8 years
Number of Payments	8 annual
Payment Amount	\$175,581.01
Interest rate	2.25%

NOTE: All lease documents must be fully executed within 14 days of the date of this proposal. Failure to receive completed documents may alter the final payment schedule due to changes in rates and/or discounts. There will be a \$250 fee if an escrow option is necessary.

PERFORMANCE BOND: To utilize the prepay program, a performance bond is required. Said performance bond shall be paid for directly to Pierce manufacturing or financed by PNC Equipment Finance as part of the transaction

TYPE OF FINANCING: Tax-exempt Lease Purchase Agreement with a \$1.00 buy out option at end of lease term. Said agreement shall be a net lease arrangement whereby lessee is responsible for all costs of operation, maintenance, insurance, and taxes.

BANK QUALIFICATION: This proposal assumes that the lessee will not be issuing more than \$10 million in tax-exempt debt this calendar year. Furthermore, it is assumed that the lessee will designate this issue as a qualified tax-exempt obligation per the tax act of 1986.

LEGAL TITLE: Legal title to the equipment during the lease term shall vest in the lessee, with PNC Equipment Finance perfecting a first security interest

AUTHORIZED SIGNORS: The lessee's governing board shall provide PNC Equipment Finance with its resolution or ordinance authorizing this agreement and shall designate the individual(s) to execute all necessary documents used therein.

LEGAL OPINION: The lessee's counsel shall furnish PNC Equipment Finance with an opinion covering this transaction and the documents used herein. This opinion shall be in a form and substance satisfactory to PNC Equipment Finance.

VOLUNTEER FIRE DEPARTMENTS: If Lessee is a Volunteer Fire Department, a public hearing under the requirements of Section 147(f) of the Internal Revenue Code of 1986 shall be conducted to authorize this transaction. It is recommended that a notice of the public hearing be published 10 to 14 days in advance of the public hearing.

This proposal will be **valid through 10/28/2016** from the above date and is subject to final credit approval by PNC Equipment Finance and approval of the lease documents in PNC Equipment Finance's sole discretion. To render a credit decision, lessee shall provide PNC Equipment Finance with their most recent two years' audited financial statements, copy of their most recent interim financial statement, and current budget.

Accepted by: _____ Proposal submitted by Kim Simon

New bedford

Compound Period: Annual

Nominal Annual Rate: 2.250%

CASH FLOW DATA

Event	Date	Amount	Number
1 Loan	9/27/2016	1,272,468.00	1
2 Payment	9/27/2017	175,581.01	8

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal
Loan 9/27/2016			
1 9/27/2017	175,581.01	28,630.53	146,950.48
2 9/27/2018	175,581.01	25,324.14	150,256.87
3 9/27/2019	175,581.01	21,943.36	153,637.65
4 9/27/2020	175,581.01	18,486.52	157,094.49
5 9/27/2021	175,581.01	14,951.89	160,629.12
6 9/27/2022	175,581.01	11,337.74	164,243.27
7 9/27/2023	175,581.01	7,642.26	167,938.75
8 9/27/2024	175,581.01	3,863.64	171,717.37
Grand Totals	1,404,648.08	132,180.08	1,272,468.00



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 the City of New Bedford, MA a Massachusetts municipality ("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 fifteen (15) calendar days of Delivery to inspect the Product for substantial conformance with the material Specifications; unless Pierce receives a Notice of Defect within fifteen (15) 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 date it is signed and approved by Pierce'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.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of **\$1,321,470.00** ("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. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost. To the extent practicable, Pierce will document and itemize any such price increases for the Customer.

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. A Change Order is only effective when counter-signed by Pierce's authorized representative.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by a party 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 9.0 months of the Effective Date of this Agreement, F.O.B. New Bedford Fire Department, New Bedford, MA. Risk of loss shall pass to Customer upon Delivery. (b) Inspection and Acceptance. Upon Delivery, Customer shall have fifteen (15) 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 fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer.

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; 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 New Bedford
New Bedford Fire Department
868 Pleasant Street
New Bedford, Massachusetts 02740

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, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, 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 Pierce be liable for consequential, incidental or punitive damages incurred by Customer 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 Pierce's own negligence, or otherwise.

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

<u>Commercial General Liability Insurance:</u>	
Products/Completed Operations Aggregate:	\$1,000,000
Each Occurrence:	\$1,000,000
<u>Umbrella/Excess Liability Insurance:</u>	
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.

12. Indemnity. The Customer shall indemnify, defend and hold harmless Pierce, its officers, employees, dealers, agents or subcontractors, from any and all claims, costs, judgments, liability, loss, damage, attorneys' fees or expenses of any kind or nature whatsoever (including, but without limitation, personal injury and death) to all property and persons caused by, resulting from, arising out of or occurring in connection with the Customer's purchase, installation or use of goods sold or supplied by Pierce which are not caused by the sole negligence of Pierce.

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.

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 laws provisions, this Agreement is to be governed by and under the laws of the state of Wisconsin.

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 by the Customer shall not be applicable, unless accepted in writing by Pierce's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by Pierce's authorized representative.

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 Pierce Manufacturing, Inc.'s authorized representative.

Accepted and agreed to:

PIERCE MANUFACTURING, INC.

CUSTOMER: City of New Bedford, MA

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

PURCHASE DETAIL FORM

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

Date: September 15, 2016

Customer Name: City of New Bedford, Massachusetts

Quantity	Chassis Type	Body Type	Price per Unit
Two (2)	Pierce® Arrow XT	1500 GPM Pumps	\$1,272,468.00
			\$
			\$
			\$
			\$

Provided that a 100% prepayment in the above amount is remitted to Pierce Manufacturing Inc. within fifteen (15) days of a fully executed contract. The balance due at time of delivery will be 0.00.
The above amount reflects HGAC contract pricing.

Warranty Period: Two (2) year bumper to bumper and other warranties as specified in bid proposal #325.

Training Requirements: Standard

Other Matters: 100% Performance Bond

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: As stated above

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Pierce.] All taxes, excises and levies that Pierce may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by Pierce to the Customer shall be for the account of the Customer and shall be added to the Purchase Price. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. Pierce will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a substantial nonconformance with material Specifications (other than freight), the Customer may withhold up to five percent (5%) of the Purchase Price until such time that Pierce substantially remedies the nonconformance with material Specifications, but no longer than sixty (60) days after Delivery. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled, but no longer than sixty (60) days after Delivery. Pierce shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by Pierce or any of its affiliated companies to secure payment of the Purchase Price for all such goods and products. In the event of nonpayment by the Customer of any debt, obligation or liability now or hereafter incurred or owing by the Customer to Pierce, Pierce shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the state of Wisconsin.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF _____, 2016 BETWEEN PIERCE MANUFACTURING INC. AND THE CITY OF NEW BEDFORD, MA 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

AS PROVIDED IN PROPOSAL #325 BY PIERCE MANUFACTURING INC.

EXHIBIT C

PIERCE PROPOSAL

AS PROVIDED IN PROPOSAL #325 BY PIERCE MANUFACTURING INC.