



PURCHASE AGREEMENT

This Purchase Agreement (“**Agreement**”) is effective as of the date of the Mayor’s signature below and is between the City of Everett, a Washington municipal corporation (the “**City**”), and the Seller identified in the Basic Provisions below (“**Seller**”). This Agreement is for purpose of the purchase by the City from Seller of three Apparatuses for the City’s Fire Department. This Agreement includes and incorporates the Basic Provisions, the attached Terms and Conditions, and the documents listed as Exhibits in the Basic Provisions.

BASIC PROVISIONS	
Request for Proposals	2023-104 Triple Combination Pumper(s)
Seller	Hughes Fire Equipment, Inc.
	910 Shelley Street
	Springfield, OR 97477
City Project Manager	Dave DeMarco
	City of Everett -- Fire
	2801 Oakes Street
	Everett, WA 98201
	ddemarco@everettwa.gov
Seller’s Project Manager	Darby Hepper
	910 Shelley Street, Springfield, OR 97477
	dhepper@hughesfire.com
Apparatus	Triple Combination Pumps (Pierce Enforcer Pumps DHE377)
Quantity of Apparatuses	3

Total Purchase Price	\$3,524,265 plus tax, which is the total price for all three Apparatuses.
Final Acceptance Deadline	The Final Acceptance Deadline for each Apparatus shall be as agreed between Seller and City as set forth in the attached Terms and Conditions.
Additional Provisions	N/A
Exhibits	Exhibit A: Price Page Exhibit B: Seller’s proposal in response to RFP (“Proposal”) dated October 31, 2023

IN WITNESS WHEREOF, the City and Seller have executed this Agreement, which includes and incorporates the above Basic Provisions, the attached Terms and Conditions, and the documents listed as Exhibits in the Basic Provisions.

**CITY OF EVERETT
WASHINGTON**

HUGHES FIRE EQUIPMENT, INC.



Cassie Franklin, Mayor

Signature: Rex Hughes

01/30/2024

Date

Name of Signer: Rex Hughes

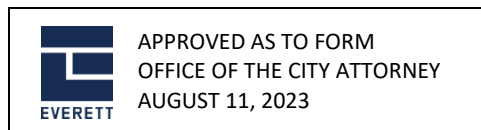
Signer’s Email Address: staylor@hughesfire.com

Title of Signer: President

ATTEST



Office of the City Clerk



**ATTACHMENT TO
PURCHASE AGREEMENT
(TERMS AND CONDITIONS)**

1. **Agreement to Purchase and Sell.** Subject to the terms, conditions, and provisions of this Agreement, Seller agrees to manufacture and sell to the City, and City agrees to purchase from Seller, three Apparatuses.
2. **Purchase Order.** The City will issue purchase order(s) to Seller for the Apparatuses. The purchase order(s) will be notice(s) to proceed. The pre-printed terms and conditions on the purchase order are not part of this Agreement.
3. **Final Approved Plans.**
 - A. After purchase order issuance, Seller shall produce complete plans, drawings, and specifications for each ordered Apparatus in accordance with the requirements of this Agreement (including without limitation the requirements in the RFP scope of work) and submit them for the City Project Manager's written approval. This submission will also contain a proposed deadline for final acceptance of the Apparatus.
 - B. The complete final set of plans, drawings, and specifications for an Apparatus as approved in writing by the City Project Manager are collectively referred to in this Agreement as its "Final Approved Plans." The final acceptance deadline for an Apparatus approved by the City Project Manager is referred to in this Agreement as the "Final Acceptance Deadline."
4. **Manufacture and Acceptance.**
 - A. Seller will manufacture and complete each ordered Apparatus in accordance with its Final Approved Plans so that the Apparatus may be accepted by the City no later than its Final Acceptance Deadline.
 - B. The City will accept a completed Apparatus after the Apparatus has passed all testing and inspections required in the RFP and is delivered to the City at the City's chosen location in Everett, Washington. The City and Seller will fully cooperate with each other to schedule and complete all required testing and inspections. The City has no obligation to accept an Apparatus not manufactured and completed in accordance with its Final Approved Plans or that has not passed all required testing and inspections. The City's acceptance of an Apparatus will be in writing and signed by the City's Project Manager.
 - C. Acceptance of an Apparatus by the City does not in any way release Seller from Seller's warranty that the Apparatus is manufactured and completed in accordance with its Final Approved Plans.
 - D. The Seller and City Project Managers may approve in writing extension(s) of the Final Acceptance Deadline(s) up to a maximum total extension of one year per Apparatus, with such approvals not unreasonably withheld. Additional extension(s) will require amendment to this Agreement as set forth in Section 11.K below, which is at each party's sole discretion.
5. **Payment.**
 - A. Unless amended in accordance with Section 11.K below, the City will pay Seller \$1,174,755.00 plus tax as purchase price for each accepted Apparatus.

- B. Within 30 days after Apparatus acceptance and delivery to the City of an invoice for the Apparatus, the City will pay Seller the Apparatus purchase price in full. The City will not make any payments to Seller for an Apparatus pre-acceptance.
6. **City Termination Rights.** In addition to any other remedies the City may have under applicable law, the City may terminate without liability to Seller an already-placed order for an Apparatus in the following circumstances:
- A. Seller's material breach of this Agreement with respect to the Apparatus, which breach remains uncured 90 days after written notice thereof to Seller from the City.
 - B. Seller has not delivered the Apparatus ready for acceptance by the City by the Final Acceptance Deadline.
 - C. Prior to the Final Acceptance Deadline, the City has reasonably determined that Seller will be unable to deliver the Apparatus ready for acceptance by the City by the Final Acceptance Deadline.

In addition, the City may terminate this Agreement and order(s) hereunder if Seller is voluntarily or involuntarily dissolved, or is adjudged to be bankrupt or is subject to a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of insolvency. For the purpose of this Section, "bankrupt" shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors, insolvency, the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of Seller's obligations under this Agreement.

7. **Title/Risk of Loss.** Seller bears all risk of loss or of damage prior to the City's acceptance. Upon acceptance of an Apparatus by the City and payment in full for the Apparatus to the Seller, the Seller and the City will execute all documents necessary to transfer title of the Apparatus to the City. Seller warrants that each conveyance of an Apparatus to the City will be free and clear of all liens, security interests, and encumbrances.
8. **Other Services and Deliverables.** Seller will provide other services and deliverables as set forth in the RFP.
9. **Warranties.** Seller warrants that the manufacture and completion of each accepted Apparatus is in accordance the Final Approved Plans for that Apparatus. In addition, Seller will provide all warranties stated in the RFP or in the Proposal.
10. **Order of Precedence.** The following is the order of precedence for the Agreement, with higher-listed parts governing lower-listed parts:
- i. Basic Provisions
 - ii. Terms and Conditions
 - iii. RFP
 - iv. Proposal

No terms or conditions generated by Seller, whether contained in the Seller's purchase order acknowledgement or invoice or otherwise, are part of this Agreement.

11. **Miscellaneous.**
- A. **Subletting/Assignment of Contracts.** Seller shall not sublet or assign any of this Agreement without the express, prior written consent of the City Project Manager.

- B. **Independent Contractor.** Seller, its subcontractors, agents and employees are independent Suppliers performing services for the City and are not employees of City.
- C. **Indemnification.** To the extent of Seller's negligence, breach of this Agreement, violation or law, or willful misconduct, and except as otherwise provided in this Section, Seller hereby agrees to defend and indemnify and save harmless the City from any and all losses, claims, and liabilities arising from or relating to this Agreement. Seller's duty to defend and indemnify and save harmless pursuant to this Section is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Seller. Seller's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. Solely and expressly for the purpose of its duties to indemnify and defend and save harmless the City, the Seller specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Seller recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. This Section shall survive the expiration or termination of this Agreement.
- D. **Insurance.**
1. Seller shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Seller's own cost and expense, the policies of insurance as set forth in this Section with companies authorized to do business in the State of Washington, which are rated at least "A-" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City.
 - i. **Workers' Compensation Insurance** as required by applicable law and **Employer's Liability Insurance** with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, Seller shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless Seller covers such employees.
 - ii. **Commercial General Liability Insurance** on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate.
 - iii. **Business Automobile Liability Insurance** in an amount not less than \$1,000,000 per occurrence.
 2. The above liability policies shall be primary as to the City and shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Seller to furnish the required insurance. The City of Everett shall be additional insured on the commercial general liability insurance and the automobile insurance.
 3. Seller shall provide the City or the City's designee with a certificate of insurance acceptable to the City Attorney evidencing the required insurance.
- E. **Audits and Inspections.** In addition to any other audit or inspection rights elsewhere in this Agreement, at any time during normal business hours and as often as the City may deem necessary, Seller shall make available to the City for the City's examination all of Seller's records and documents with respect to all matters covered by this Agreement.

- F. **Compliance with Federal, State and Local Laws.** Seller shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.
- G. **Compliance with the Washington State Public Records Act.** Seller acknowledges that the City is subject to the Public Records Act, chapter 42.56 RCW (the "Act"). All records owned, used or retained by the City are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the City or Seller. Seller shall cooperate with the City so that the City may comply with all of its obligations under the Act.
- H. **Equal Employment Opportunity.** Seller shall not discriminate against any employee, applicant for employment, or other person on the basis of race, color, religion, sex, age, disability, marital state, or national origin or other circumstance prohibited by applicable federal, state, or local law or ordinance. Seller shall comply with and shall not violate any applicable provisions of Chapter 49.60 RCW, Title VI of the Civil Rights Act of 1964, and all applicable federal, state, or local law or ordinance regarding non-discrimination.
- I. **Waiver.** Any waiver by Seller or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
- J. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.
- K. **Amendment of Agreement.** This Agreement may only be modified by a writing explicitly identified as a modification of this Agreement that is signed by the Mayor of the City and an authorized representative of Seller. The parties acknowledge that amendment(s) to the Agreement that increase the Total Purchase Price to more than \$4,000,000 (including tax) will require approval by the City of Everett City Council.
- L. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
- M. **Notices.**
1. Notices to the City shall be sent to the City Project Manager address in the Basic Provisions.
 2. Notices to Seller shall be sent to its Project Manager address in the Basic Provisions.
- N. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.
- O. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
- P. **Force Majeure.** Whenever a period of time is prescribed for the taking of an action by either party hereto, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to (a) general strikes, (b) acts of God, (c) material shortages, (d) war, (e) terrorist acts, (f) civil disturbances, (g) floods, (h) earthquakes, (i) fires, or (j) other causes beyond the reasonable control of the performing

party, and, with respect to Seller's performance, any delays incurred by Seller as a result of the nonperformance or delay by the City of any of its obligations hereunder, and, with respect to City's performance, any delays incurred by City as a result of the nonperformance or delay by Seller of any of its obligations hereunder ("Force Majeure"). Any party hereto claiming a right to a Force Majeure extension shall notify the other Party immediately of the claimed right to an extension and the specific claimed basis for the extension. No Force Majeure extension shall be in total greater than six months unless approved in writing by the Mayor of the City and by an authorized representative of the Seller.

- Q. **Signature/Counterparts.** This Agreement and any amendment thereto may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.

END OF TERMS AND CONDITIONS

Exhibit A: Price Page



Hughes Fire Equipment, Inc.
 910 Shelley Street
 Springfield, OR 97477
 T: 541-747-0072
 F: 541-747-0073

www.hughesfire.com

October 31, 2023

Theresa Bauccio-Teschlog
 City of Everett, Washington
 2930 Wetmore Ave
 Everett, WA 98201

Hughes Fire Equipment, Inc. and Pierce Manufacturing, Inc. are pleased to offer for your consideration the enclosed proposal for three (3) Pierce Enforcer Pumpers, per your Request for Proposal #2023-104 for three (3) Triple Combination Pumpers.

The price for three (3) Pierce Enforcer Pumpers DHE377 is **\$3,524,265.00**, F.O.B. Customer's facility in Everett, Washington, plus applicable sales tax in the amount of \$359,475.04 for a total purchase price of **\$3,883,740.04**. The units would be ready for delivery within 1,373 to 1,525 calendar days after execution of the contract*. **This time does not include any possible delays stemming from the pandemic or other natural disasters. If additional time is needed to manufacture apparatus due to issues stemming from the pandemic, notification of the delay will be sent.** Final payment is due 30 days after the unit leaves the factory for delivery.

**Please note: Based on the specification and Pierce's delivery schedule at time of bid, the estimated time for manufacturing is 1,373 to 1,495 calendar days. After manufacturing the unit will be delivered to a Hughes Fire Equipment Service Facility where it will receive a pre-delivery inspection prior to transportation to the City. The estimated time for delivery from the factory to a Hughes Fire Equipment Service Facility, pre-delivery inspection, and transportation to the City is 30 days. The total time from order placement to receipt of apparatus at your facility would be between 1,373 to 1,525 days.*

Price Recaps:

Description	Price
One (1) Pierce Enforcer Pumper DHE377	\$1,200,866.00
Plus Washington State Sales Tax @ 9.9%	118,885.73
Plus Washington State Motor Vehicle Tax @ 0.3%	3,602.60
Total price including taxes	\$1,323,354.33

Description	Price
Two (2) Pierce Enforcer Pumpers DHE377	\$2,362,564.00
Plus Washington State Sales Tax @ 9.9%	233,893.84
Plus Washington State Motor Vehicle Tax @ 0.3%	7,087.69
Total price including taxes	\$2,603,545.53

Description	Price
Three (3) Pierce Enforcer Pumpers DHE377	\$3,524,265.00
Plus Washington State Sales Tax @ 9.9%	348,902.24
Plus Washington State Motor Vehicle Tax @ 0.3%	10,572.80
Total price including taxes	\$3,883,740.04

Terms:

Price Expiration – The above pricing is valid until January 26, 2024.

Multiple Unit Pricing – Multiple unit pricing is based on the apparatus being purchased, manufactured, and delivered at the same time. If apparatus are not ordered, manufactured, and delivered at the same time, revised pricing will be required.

Credit Card Payments – Payments made for apparatus using a credit card will be applicable to a credit card convenience fee.

Performance Bond – A performance bond is not included in the above pricing.

Transportation - The above pricing includes funds to transport the apparatuses under its own power from the factory to the customer location. If the City elects to drive the apparatus from the factory, \$16,500.00 (\$5,500.00 per unit) may be deducted from the purchase price. If this option is elected payment in full and proof of insurance must be provided prior to leaving the factory and the customer is responsible for compliance with all state, local and federal DOT requirements including the driver possessing a valid CDL license.

Inspection Trips – Three (3) factory inspection trips for four (4) fire department customer representatives are included in the above pricing. The inspection trips will be scheduled at times mutually agreed upon between the manufacturer's representative and the customer. Airfare, lodging, and meals while at the factory are included. In the event the fire department is unable to travel to the factory or the factory is unable to accept customers due to the restrictions caused by a national disaster or pandemic then the Dealership reserves the right to use forms of electronic media to accomplish the intention of the inspection trips. Every effort will be made to make the digital media as thorough as possible to satisfy the expectations of the fire department. If the Department elects to forgo an inspection trip \$2,400.00 per traveler (per trip) will be deducted from the final invoice.

Future Changes – Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and in any such event any resulting cost increases incurred to comply will be added to the Purchase Price to be paid by the Customer and documented on a Change Order.

Federally Funded Purchases – Company is registered with SAM.gov, is in good standing for purchases utilizing federal funds, and has no past, pending, or threatened litigation that would impact its ability to fulfill the obligations committed herein.

Hughes Fire Equipment, Inc., with corporate offices located in Springfield, Oregon, is the Pierce dealer for your territory and can be reached by calling 800-747-6510. Our regional facility located in Tacoma, Washington will be the service center responsible for this unit.

Pierce Manufacturing, Inc., a subsidiary of Oshkosh Corporation, has been in the manufacturing business since 1913 in Appleton, Wisconsin, and has facilities located in Weyauwega, Wisconsin and Bradenton, Florida.

This proposal may be utilized for Cooperative Purchasing by other public agencies.

We would like to thank you for inviting us to submit a proposal for this equipment. If we can be of further assistance, please feel free to contact us,

Sincerely,



Rex Hughes
President
Pierce Manufacturing, Inc.
RH/dt



Darby Hepper
Sales Representative
Pierce Manufacturing, Inc.
DHE/dt











2023-104 Triple Combination Pumpers Award_rev.SD

Final Audit Report

2024-01-30


Created:	2024-01-26
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 Agreement completed.

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