



EM-111

PURCHASE AGREEMENT – SINGLE UNIT HGAC

This Purchase Agreement (together with all attachments referenced herein, the “Agreement”), made and entered into by and between MacQueen Equipment, LLC., as Delaware corporation DBA MacQueen Emergency (“MacQueen”), and The City of Columbia Heights (“Customer”), a Minnesota municipality is effective as of the date specified in Section 3 hereof.

1. Definitions

- a. **“Product”** means the fire apparatus and any associated equipment furnished for the Customer by MacQueen, pursuant to the specifications.
- b. **“Specifications”** means the general specifications, technical specifications, orientation, and testing requirements for the Product contained in the MacQueen Proposal for the Product prepared in response to the Customer’s request for proposal.
- c. **“MacQueen Proposal”** means the proposal provided by MacQueen attached as Exhibit C prepared in response to the Customer’s request for proposal.
- d. **“Delivery”** means the date MacQueen is prepared to make physical possession of the Product available to the Customer.

2. Purpose

This Agreement sets forth the terms and conditions of MacQueen’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 MacQueen’s authorized representative pursuant to Section 20 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 \$656,953 (“Purchase Price”). Prices are in US Funds.

5. Agreement Changes

The Customer may request that MacQueen incorporate a change to the Products or the Specifications for the Products by delivering a change order to MacQueen; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit MacQueen to evaluate the feasibility of such change (“Change Order”). Within seven (7) business days of receipt of a Change Order, MacQueen 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. MacQueen 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 MacQueen’s authorized representative.

6. Cancellation/Termination

In the event this Agreement is cancelled or terminated by a party before completion, MacQueen 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 MacQueen; (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. MacQueen 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 MacQueen upon sale of the Product to another purchaser, plus any costs incurred by MacQueen to conduct any such sale.

7. Delivery, Inspection, and Acceptance

Delivery

Delivery of the Product is scheduled to be within ten and one half **(10.5) months** of the Effective Date of this Agreement. Risk of loss shall pass to Customer upon Delivery. Delivery shall be made, and title shall pass upon Customer’s complete fulfillment of its obligations arising under Section 4 hereof.

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 MacQueen with written notice sufficient to permit MacQueen to evaluate such non-conformance (“Notice of Defect”). Any Product not in substantial conformance to material Specifications shall be remedied by MacQueen within thirty (30) days from the Notice of Defect. In the event MacQueen 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.

8. 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:

MacQueen Equipment, LLC
1125 7th Street East
St. Paul, MN 55106

City of Columbia Heights
590 40th Ave NE
Columbia Heights, MN 55421

9. Standard Warranty

The equipment sold herein will be manufactured by Pierce Manufacturing, Inc. and any 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 and MacQueen.

Disclaimer

Other than as expressly set forth in this agreement, neither Pierce, its Parent Company, Affiliates, Subsidiaries, Licensors, suppliers, distributors, dealers, including without limitation, MacQueen Equipment, LLC, or other 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 against infringement, and the implied warranty of 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.

Exclusions of Incidental and Consequential Damages

In no event shall MacQueen 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 MacQueen's own negligence, or otherwise.

10. Insurance

MacQueen 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: \$ 2,000,000

Each Occurrence: \$ 2,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$ 5,000,000

Each Occurrence: \$ 5,000,000

The Customer may request MacQueen to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above.

11. Indemnity

The Customer shall indemnify, defend and hold harmless MacQueen, 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 MacQueen which are not caused by the sole negligence of MacQueen or Pierce.

12. Force Majeure

MacQueen shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond MacQueen's control which make MacQueen'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, acts of God or the public enemy or terrorism.

13. 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) MacQueen 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 MacQueen.

14. Relationship of Parties

Neither party is a partner, employee, agent, or joint venture of or with the other.

15. Assignment

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

16. 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 Minnesota.

17. Facsimile Signatures

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

18. 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 MacQueen’s authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by MacQueen’s authorized representative.

19. Conflict

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

20. Signatures

This Agreement is not effective unless and until it is approved, signed and dated by MacQueen’s authorized representative.

Accepted and Agreed to:

MACQUEEN EQUIPMENT, LLC

Signature: _____
Name: Daniel Corcoran
Title: District Sales Manager
Date: January 5th, 2021

CUSTOMER: City of Columbia Heights

Signature: _____
Name: _____
Title: _____
Date: _____



EXHIBIT A – PURCHASE DETAIL FORM

MacQueen Equipment, LLC
1125 7th Street East
St. Paul, MN 55106

Customer Name: City of Columbia Heights **Date:** January 5th, 2021

Quantity	Chassis Type	Body Type	Price per Unit
1	2021 Pierce Impel Chassis	152" 2 nd Gen Alluminum Pumper	\$ 656,953
			\$
			\$
			\$
			\$

Applicable Discounts:

Customer has agreed to make 100% full pre-payment and accept all discounts detailed in exhibit C

Warranty Period: 1-year bumper-to-bumper, other warranties as detailed in full bid proposal submitted to the Fire Chief on 1-5-2021

Orientation Requirements: MacQueen representative will conduct an apparatus orientation with the department as agreed upon between the fire chief and district sales manager

Other Matters:

- \$3,500 customer contingency fund included for build changes and loose equipment mounting
- A performance bond, issued by a surety company, will be provided and is included in the total price

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

Payment Terms

Full payment due N15 from contract signing. See full details in Exhibit C.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to MacQueen.] All taxes, excises and levies that MacQueen 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 MacQueen 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 (1.5%) per month or such lesser amount permitted by law. MacQueen 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 MacQueen 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. MacQueen shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by MacQueen 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 MacQueen, MacQueen 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 Minnesota.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF January 5th, 2021 BETWEEN MACQUEEN AND the City of Columbia Heights 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 MACQUEEN HEREIN.

EXHIBIT B – WARRANTY

LIMITED WARRANTY

Limited Warranty Terms and Disclaimer

Pierce warrants that all new and unused goods furnished by Pierce are free from defect in workmanship and material as of the time and place of delivery by Pierce in accordance with its Standard Limited Warranty in effect at the date of contract formation and stated below. Pierce's obligation under this Limited Warranty is subject to the following qualifications: a) Pierce or its authorized Dealer shall have been notified of such claimed defect within thirty (30) days of its discovery or such later date as is specified in the Standard Limited Warranty; b) the vehicle shall have been subject only to proper use normal for similar vehicles; and c) it shall have been regularly maintained and serviced in accordance with the Manufacturer's Service Manual. No defective part may be returned to the factory without Pierce's prior written consent, or that of our authorized representative. Any return must be with transportation prepaid, which may be refunded at the discretion of Pierce. The Standard Limited Warranty for the goods is incorporated herein by reference. It is the exclusive warranty given by Pierce. PIERCE HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, notwithstanding any knowledge

of Pierce regarding the use or uses intended to be made of goods, proposed changes or additions to goods, or any assistance or suggestions that may have been made by Pierce personnel.

STANDARD LIMITED WARRANTY

Base Warranties

- One (1) year basic limited warranty – all
- One (1) year standard Pierce Fire and Rescue Service Center limited warranty – chassis, cab, apparatus body
- One (1) year standard Pierce Fire and Rescue Service Center limited warranty – paint
- Ninety (90) day standard Pierce Fire and Rescue Service Center limited warranty – parts serviced or repaired
- Six (6) month basic parts limited warranty

Chassis and Cab Warranties

- Three (3) year chassis limited warranty – Velocity and Impel
- Ten (10) year standard cab structural integrity limited warranty – all
- Fifty (50) year chassis frame rail & Crossmember lifetime structural integrity limited warranty - Velocity and Impel chassis

Body Structural Integrity Warranties

- Ten (10) year standard body structural integrity limited warranty - all aerial, pumpers, tankers, elliptical, dryside

Paint and Graphics Warranties

- One (1) year graphics fading and deterioration (vinyl, painted, reflective, gold)
- Three (3) year standard Goldstar/Gold Leaf lamination limited warranty
- Ten (10) year standard prorated paint/corrosion warranty - trucks shipped after Jan 1, 2004

Component Warranties

- Three (3) year tak4 front suspension limited warranty
- Three (3) year material and workmanship aerial hydraulic system seals
- Fifty-four (54) month material and workmanship camera system
- Five (5) year material and workmanship Command Zone electronics
- Five (5) year material and workmanship foam system control head
- Six (6) year PUC pump limited warranty
- Ten (10) year standard stainless-steel plumbing - piping and weldments



EXHIBIT C - PROPOSAL

January 5th, 2021

RE: Proposal for the City of Columbia Heights

MacQueen Emergency, (“MacQueen”), the licensed and authorized dealer for Pierce Manufacturing Inc. (“Pierce”) in the States of Minnesota, North Dakota, South Dakota, Nebraska and Missouri, is pleased to provide the following proposal for one (1) 2021 Pierce Impel Chassis, 152” Aluminum Body, 2nd Gen Pumper. This proposal is based on the accompanying proposal specifications, which are tailored to meet your needs. The proposal pricing is based on current HGAC (Houston Galveston Area Council) FS12-19 contract pricing and includes the fees associated with an HGAC purchase.

Description

Details		Details	Initials Indicating Acceptance
List Price	\$ 702,857		
Strategic Customer Discount	\$ (38,836)		
HGAC Discount	\$ (7,968)		
HGAC Sales Price	\$ 656,053	Includes \$2000 HGAC fee	
Chassis pre-payment discount	\$ (10,148)		
Full Pre-pay (interest) discount	\$ (7,104)		
Performance Bond	\$1,610	Provided by a Surety company	
Total	\$ 640,411	Due N20 from contract signing - Includes discounts and performance bond	

- To take advantage of all prepayment discounts, the total of \$640,411 must be paid within fifteen (15) days of purchase order or contract signing issued to MacQueen.
- The proposal pricing includes the delivery cost from Appleton, WI.
- Included in this price are travel expenses for three (3) of your personnel to travel to our factory for preconstruction, mid-construction inspection and final inspection.
- Delivery time for the proposed unit will be within ten and one half (10.5) months from the date of order which will be the date a Purchase Agreement is executed between Buyer and MacQueen in substantially the form attached hereto as Exhibit 1.
- This proposal is valid until January 31st, 2021.
- Tax is excluded from this proposal. In the event the purchasing organization is not exempt from Sales Taxes or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay all taxes due.

Balance of sales price is due upon delivery. Payment must be remitted to MacQueen.

Any changes to the original specification will be invoiced or credited as a separate transaction from the original proposal.

A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first thirty (30) days. The late fee then increases to .044% per day until the payment is received. In the event of a Prepayment received after the due date above, the discount will be reduced by same percentages above increasing the cost of the apparatus.



In the event this proposal is accepted, and a purchase order is issued then cancelled or terminated by the City of Columbia Heights before completion, MacQueen 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 the approval drawings;
- c. 30% of the Purchase Price upon any material requisition.

The cancellation fee may increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. MacQueen endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by MacQueen upon sale of the product to another purchaser, plus any costs incurred by MacQueen to conduct such sale.

To ensure the above stated terms and conditions are understood and adhered to, MacQueen requires an authorized individual from the purchasing organization to sign and date this proposal and include it with any purchase order.

Upon signing of this proposal, the terms and conditions stated herein will be considered binding and accepted by the City of Columbia Heights. The terms and acceptance of this proposal will be governed by the laws of the state of Minnesota. Venue of any claim regarding this proposal will lie in the county Customer is located.

No additional terms or conditions will be binding upon MacQueen unless agreed to in writing and signed by a duly authorized officer of MacQueen.

Sincerely,
MACQUEEN EMERGENCY

By Daniel Corcoran

I, _____, the authorized representative of the City of Columbia Heights, agree to purchase one (1) 2021 Pierce Impel Chassis, 152" Aluminum Body, 2nd Gen Pumper and agree to the terms of this proposal.

Signature

Date