

SAFETY COMMITTEE

**Reider
Bond
Jones**

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE PURCHASE OF ONE NEW 2016 PIERCE FIRE ENGINE TRUCK THROUGH THE OHIO COOPERATIVE PURCHASING PROGRAM FROM PIERCE MANUFACTURING, INC., 2600 AMERICAN DRIVE, APPLETON, WI 54912 AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LORDSTOWN, COUNTY OF TRUMBULL, STATE OF OHIO, TWO-THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:

Section I: That the Village of Lordstown hereby agrees to purchase one new 2016 Pierce Fire Engine motor vehicle as per the attached **Exhibit "A"** in accordance with Resolution No. 3-88 authorizing the Village of Lordstown to participate in the State of Ohio Cooperative Purchasing Program.

Section II: That the Mayor and Clerk are hereby authorized and directed to execute on behalf of the Village of Lordstown the purchase order for said motor vehicle and to pay the vendor a sum not to exceed Five Hundred Ten Thousand and 00/100 Dollars (\$510,000.00) under the state contract in which the Village participates for the purchase of the aforementioned motor vehicles.

Section III: That the cost of said motor vehicles shall not exceed Five Hundred Ten Thousand and 00/100 (\$510,000.00) which sum shall be paid from the 303.220.55001 Account of the Vehicle Replacement Fund.

Section IV: That this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and for the further reason that said motor vehicles must be ordered for a build out date early in 2015.

Section V: That the passage of this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meetings in accordance with the provisions of Ohio Revised Code Section 121.22.

Passed in Council this _____ day of _____, 2015.

_____, Mayor

_____, Clerk

SAFETY COMMITTEE
Reider
Bond
Jones

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE PURCHASE OF ONE NEW 2016 PIERCE
FIRE ENGINE TRUCK THROUGH THE OHIO COOPERATIVE PURCHASING
PROGRAM FROM PIERCE MANUFACTURING, INC., 2600 AMERICAN DRIVE,
APPLETON, WI 54912 AND DECLARING AN EMERGENCY.**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF
LORDSTOWN, COUNTY OF TRUMBULL, STATE OF OHIO, TWO-THIRDS OF THE MEMBERS
ELECTED THERETO CONCURRING:**

Section I: That the Village of Lordstown hereby agrees to purchase one new 2016 Pierce Fire Engine motor vehicle as per the attached **Exhibit "A"** in accordance with Resolution No. 3-88 authorizing the Village of Lordstown to participate in the State of Ohio Cooperative Purchasing Program.

Section II: That the Mayor and Clerk are hereby authorized and directed to execute on behalf of the Village of Lordstown the purchase order for said motor vehicle and to pay the vendor a sum not to exceed Five Hundred Ten Thousand and 00/100 Dollars (\$510,000.00) under the state contract in which the Village participates for the purchase of the aforementioned motor vehicles.

Section III: That the cost of said motor vehicles shall not exceed Five Hundred Ten Thousand and 00/100 (\$510,000.00) which sum shall be paid from the 303.220.55001 Account of the Vehicle Replacement Fund.

Section IV: That this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and for the further reason that said motor vehicles must be ordered for a build out date early in 2015.

Section V: That the passage of this Ordinance and all deliberations relating to the passage of this Ordinance were held in open meetings in accordance with the provisions of Ohio Revised Code Section 121.22.

Passed in Council this _____ day of _____, 2015.

_____, Mayor

_____, Clerk



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 Village Of Lordstown, a Village ("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 \$532,230 ("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 10.5 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 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

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:

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

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 Ohio.

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: _____

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: January 15, 2015

Customer Name: Village of Lordstown

Quantity	Chassis Type	Body Type	Price per Unit
1	Enforcer FR	189 PUC	\$532,203
			\$
			\$
			\$
			\$

If the Village of Lordstown prepays within 15 days of signing of the contract, a discount of \$22103 shall be applied.
Net due would be \$510,000

Warranty Period: per specifications

Training Requirements: Foam training at the factory and trainer 1 day at the department.

Other Matters: THIS IS LAW TO OHIO CO-OP Purchasing STS Schedule

Payment Terms: _____

[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 January 15, 2015 BETWEEN PIERCE MANUFACTURING INC. AND Village of Lordstown 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.