

3344



AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Purchase agreement for Fire Engine Purchase Date: 6-15-22

Statement of Purpose: We are seeking approval to purchase a new fire engine through a group purchase agreement. Attached is a sales agreement sent by our vender. We are requesting legal review.

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: [Signature] Date: 6/24/2022

Other Signatures as Requested by the City Attorney: _____

						Name/Position
	Signature					Date: _____
Budget Confirmed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>			
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>			
City Council Approval Needed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>				Date: <u>6-20-22</u>

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 6-30-22

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

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PURCHASE AGREEMENT

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Hughes Fire Equipment Inc. ("Company"), and City of Newport, a 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 Company pursuant to the Specifications.
- b. "Specifications" means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Company Proposal for the Product prepared in response to the Customer's request for proposal.
- c. "Company Proposal" means the proposal provided by Company attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. "Delivery" means the date Company is prepared to make physical possession of the Product available to the Customer.
- e. "Acceptance" The Customer shall have the opportunity, as described in Section 8(b) below, to inspect the Product for substantial conformance with the material Specifications; unless Company receives a Notice of Defect within the time frame described in Section 8(b), 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 Company'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 both Customer and Company ("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 \$631,639.00 ("Purchase Price"). Prices are in U.S. funds. A credit card convenience fee will be added to the purchase price if the Customer elects to make purchase of the Product in whole, or in part, using a credit card. The cost of the convenience fee will be determined prior to processing credit card.

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, Company will document and itemize any such price increases for the Customer.

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

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

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 25 to 28 months of the Effective Date of this Agreement, F.O.B. Customer's facility in Newport, Oregon. Risk of loss shall pass to Customer upon Delivery. Delivery of Product is subject to change pending manufacture's delivery schedule at time of order placement. Notification of change will be sent to Customer's address specified in Section 9 hereof. (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 Company with written notice sufficient to permit Company to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by Company within thirty (30) days from the Notice of Defect. In the event Company 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:

Company
Hughes Fire Equipment Inc.
910 Shelley Street
Springfield, Oregon 97477

Customer
City of Newport
169 SW Coast Hwy
Newport, OR 97365

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

a. **Disclaimer.** OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER COMPANY, 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 Company 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 Company's own negligence, or otherwise.

11. **Force Majeure.** Company shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Company's control which make Company'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, pandemics, 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.

12. **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) Company 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 Company.

13. **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 Company 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 Company until

the Purchase Price for that Product has been paid in full. In case of any default in payment, Company 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.

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

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

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

Accepted and agreed to:

COMPANY: Hughes Fire Equipment Inc.

CUSTOMER: City of Newport

Name: Rex Hughes

Name:
Spencer R. Nege

Title: President

Title: City Manager

Date: _____

Date: 07-01-2022

Signature:

Signature:

EXHIBIT A

**PURCHASE DETAIL FORM
Hughes Fire Equipment Inc.**

Date: _____

Customer Name: City of Newport

Quantity	Chassis / Body Type – Description	Price per Unit
One (1)	Pierce Enforcer Pumper NH813	\$647,360.00
Less	Chassis progress payment discount	(9,597.00)
Less	Payment upon completion at factory discount	(6,124.00)
	TOTAL	\$631,639.00

Warranty Period: Standard per HFE Proposal NH813 submitted on June 8, 2022

Training Requirements: Standard per HFE Proposal NH813 submitted on June 8, 2022

Other Matters: A performance bond is included in the above price and will be provided after order placement.

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

Payment Terms: A chassis progress payment in the amount of \$319,916.00 is due three (3) months prior to the ready for pick up from factory date. An invoice will be provided thirty (30) days prior to the due date. If payment is not made at this time \$9,597.00 will be added to the final invoice. Final payment, including any changes made during the manufacturing process, is due upon completion of the apparatus at the factory and prior to the apparatus leaving the factory for delivery.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Company.] All taxes, excises and levies that Company 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 Company 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. Company 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 Company 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. Company shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by Company 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 Company, Company 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 Oregon.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF _____, 2022 BETWEEN COMPANY AND CITY OF NEWPORT 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 COMPANY HEREIN.

EXHIBIT B

WARRANTY

STANDARD PER HFE PROPOSAL NH813 SUBMITTED ON JUNE 8, 2022

EXHIBIT C

COMPANY PROPOSAL

STANDARD PER HFE PROPOSAL NH813 SUBMITTED ON JUNE 8, 2022

