#### CITY COMMISSION MEETING Winfield, Kansas

DATE:	Monday, June 19, 2017
TIME:	5:30 p.m.
PLACE:	City Commission – Community Council Room – First Floor – City Building

## AGENDA

CALL TO ORDER	Mayor Brenda K. Butters
ROLL CALL	City Clerk, Brenda Peters

MINUTES OF PRECEDING MEETING......Monday, June 05, 2017

#### PROCLAMATION

- Proclaim June 19, 2017 as 100th Anniversary of City Management in Kansas Day

- Proclaim the month of June as Lion's Club International Centennial Recognition Month

#### **BUSINESS FROM THE FLOOR**

- Citizens to be heard

#### **NEW BUSINESS**

Ordinances & Resolutions

- **Bill No. 1740 An Ordinance –** Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an agreement by and between the Cities of Winfield and Arkansas City, Kansas, and the Rural Fire District No. 6, Cowley County, Kansas, for certain fire protection services.
- **Bill No. 1741 A Resolution** Authorizing and directing the Mayor of the City of Winfield, Kansas to execute an agreement between the City of Winfield, Kansas and Bliss Development, LLC, Mark McKenna, Managing Member, for providing the construction of certain improvements for Stonebrook Subdivision, a residential development.
- **Bill No. 1742 A Resolution** Authorizing the Mayor and the City Clerk of the City of Winfield, Kansas to execute an agreement between USD 465, Winfield, Kansas and the City of Winfield for the sale of real estate.
- **Bill No. 1743 A Resolution** Accepting and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across the real estate in a portion of the Northwest Quarter of Section 34, Township 32 South, Range 5 East of 6th P.M., in the City of Winfield, Cowley County, Kansas.
- **Bill No. 1744 A Resolution -** Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project Nos. 11-DI 908 & 17-TI 829 for street and drainage improvements between the City of Winfield, Kansas and APAC-Kansas, Inc., Shears Division Wichita, Kansas.
- **Bill No. 1744 A Resolution -** Authorizing the Mayor and Clerk of the City of Winfield, Kansas to execute a Purchase Agreement with Pierce Manufacturing Inc., a Wisconsin Corporation for a Fire Apparatus and any associated equipment pursuant to specifications.

#### **OTHER BUSINESS**

-Consider Board Appointments -Consider Joint Use Pole Agreement with Zayo

#### ADJOURNMENT

-Next Commission work session 4:00 p.m. Thursday, June 29, 2017.

-Next regular meeting 5:30 p.m. Monday, July 03, 2017.

## CITY COMMISSION MEETING MINUTES Winfield, Kansas June 5, 2017

The Board of City Commissioners met in regular session, Monday, June 05, 2017 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Brenda K. Butters presiding. Commissioner Gregory N. Thompson was also present. Also in attendance were Jeremy Willmoth, City Manager, Brenda Peters, City Clerk and William E. Muret, City Attorney. Other staff members present were Russell Tomevi, Director of Public Works/Engineering; Gary Mangus, Assistant to the City Manager; Patrick Steward, Director of Community Development; Gus Collins, Director of Gas and Wastewater Utilities; Brett Stone, Interim Police Chief; and Alan Stoll, Fire Chief were also present.

City Clerk Peters called roll. Commissioner Hutto was noted as absent.

Commissioner Thompson moved that the minutes of the May 15, 2017 meeting be approved. Mayor Butters seconded the motion. With both Commissioners voting aye, motion carried.

#### PRESENTATION

Mayor Butters presented a recognition award to retiring Fire Chief, Alan Stoll to recognize his years of service to the Winfield Fire Department.

#### OATHS OF OFFICE

City Clerk Peters administered the Oath of Office to new Police Officers; Patrolman Bradley Gamber and Patrolman John Adams. Interim Police Chief Stone presented their badges.

#### **BUSINESS FROM THE FLOOR**

D. J. Holland, 200 E 5th Ave, appeared for the purpose of explaining 'Mentoring for Success' which is a program at the Pre-release center to mentor offenders through their release date.

#### **NEW BUSINESS**

**Bill No. 1734 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas. Director of Community Development Steward explains that this resolution is to set a public hearing date and time of July 17, 2017 at 5:30 p.m. for condemnation of a structure located at 1012 Lowry Street. Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1734 was adopted and numbered Resolution No. 3017.

**Bill No. 1735 – A Resolution** – Fixing the time and place and providing for notice of a public hearing before the Governing Body of the City of Winfield, Kansas, regarding the condemnation of a certain structures, a house in the City of Winfield, Cowley County, Kansas. Director of Community Development Steward explains that this resolution is to set a public hearing date and time of July 17, 2017 at 5:30 p.m. for condemnation of a structure located at 420 Soward Street.

Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1735 was adopted and numbered Resolution No. 3117.

**Bill No. 1736 – A Resolution** – Determining the existence of certain nuisances in the City of Winfield, Kansas, and authorizing further action pursuant to the City Code of said City. Director of Community Development Steward explains that this resolution is to consider the existence of a nuisance at a property located at 1316 Mansfield, and to allow City staff to proceed with the proper notifications for clean-up of the property, and allows the City to proceed with clean-up of the property if the owner fails to do so. Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1736 was adopted and numbered Resolution No. 3217.

**Bill No. 1737 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute Bridge Replacement Project Agreement No. 39-17 between the City and the Secretary of the Kansas Department of Transportation, relating to Federal Aid for the replacement of a bridge in the City. Director of Public Works/Engineering Tomevi explains that this resolution would authorize the Mayor to sign an agreement with KDOT for specifics regarding the replacement of the 14<sup>th</sup> Avenue Bridge. The agreement also states that KDOT will fund eighty percent of the project or the first \$1.25 million. The City would be responsible for the remainder. Tomevi states that the current estimate is approximately \$1.8 million; and the City would also be responsible for the construction inspection. Tomevi explains that a contract for this inspection will be coming in the future. Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1737 was adopted and numbered Resolution No. 3317.

**Bill No. 1738 – A Resolution** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project No. 17-TI830 for asphalt street improvements between the City of Winfield, Kansas and APAC-Kansas, Inc. Shears Division, Wichita, Kansas. Director of Public Works/Engineering Tomevi explains that this resolution would authorize the award of contract to APAC Kansas for the City's local street asphalt work for 2017. The contract amount is for \$317,147.50. Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1738 was adopted and numbered Resolution No. 3417.

**Bill No. 1739 – A Resolution** – of the City of Winfield, Kansas authorizing the signing of a contract with the Kansas Power Pool (KPP) for the purchase of power and energy and the associated transmission service. City Manager Willmoth explains that this resolution is the final step to approving a new purchase power agreement with KPP. Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, Bill No. 1739 was adopted and numbered Resolution No. 3517.

#### **OTHER BUSINESS**

-Consider Engineering Services Agreement with Certified Engineering Design, P.A. for a lagoon at the Water Treatment Plant. Director of Gas & Wastewater Utilities Gus Collins explains that this action will consider an agreement with Certified Engineering Design of Wichita Kansas for the design of the construction of a new lagoon at the Water Treatment Plant. Cost for the design is \$28,500. Commissioner Thompson moved to authorize staff to enter into an agreement with Certified Engineering Design, P.A. for the design of a lagoon at the Water Treatment Plant. Motion was seconded by Mayor Butters. With both Commissioners voting aye, the motion passed.

Gus Collins, Director of Gas and Wastewater Utilities, gave an update on the progress of the work on  $5^{\text{th}}$  Avenue.

#### ADJOURNMENT

Upon motion by Commissioner Thompson, seconded by Mayor Butters, both Commissioners voting aye, the meeting adjourned at 5:51 p.m.

Signed and sealed this 16th day of June 2017.

Signed and approved this 19<sup>th</sup> day of June 2017.

Brenda Peters, City Clerk

Brenda K. Butters, Mayor

#### PROCLAMATION

WHEREAS, the year 2017 is the 100th anniversary of city management in Kansas; and

WHEREAS, on February 17, 1917, Kansas Governor Arthur Capper signed the bill authorizing adoption of the city manager form of government by Kansas cities; and

WHEREAS, on November 2, 1920, electors in Winfield voted to change the form of government, the office of Manager was created, and WJ Welfelt was installed the first city manager on April 18, 1921; and

WHEREAS, today the city or county manager plan has been adopted by voters in73 Kansas cities and 2 counties and serves 24 percent of the state's municipal population; and

WHEREAS, in addition to the city manager plan, cities in Kansas have an additional 97 cities and 30 counties with professional administrators serving over 67 percent of the states municipal population; and

WHEREAS, the Kansas Association of City/County Management is the professional association representing more than 192 local government administrators who serve Kansas cities and counties and who promote strengthening the quality of local government through professional management; and

WHEREAS, the School of Public Affairs and Administration at the University of Kansas, the Hugo Wall School of Public Affairs at Wichita State University, and the Master of Public Administration program at Kansas State University prepare graduate students to work as professional city managers, city administrators, county managers, and county administrators.

NOW, THEREFORE, I, Brenda K. Butters, Mayor of Winfield, Kansas, do hereby proclaim June 19, 2017 as:

#### 100th ANNIVERSARY OF CITY MANAGEMENT IN KANSAS DAY

in the city of Winfield, as evidence of our admiration for professional city managers, city administrators, county managers, and county administrators and in expression of our very best wishes for their continued success.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Winfield, Kansas, to be affixed this 19th day of June, 2017.

brende 11 Butter

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

#### WINFIELD LIONS CLUB

WHEREAS, the Winfield Lions Club is a member of Lions Clubs International, the world's largest Service club organization with 1.4 million members in 46,000 clubs in more than 200 countries and geographical areas; and

WHEREAS, Lions Clubs International was founded in 1917 and is celebrating 100 years of humanitarian service; and

WHEREAS, the Winfield Lions Club established in 1921, is comprised of volunteers who dedicate their time to the betterment of our community and aiding those in need; and

WHEREAS, the Winfield Lions Club is participating in numerous events as part of the Lions Club International Centennial Celebration:

NOW THEREFORE, I, Brenda Butters, Mayor, of the City of Winfield, Kansas, in recognition of the contributions of the Winfield Lions Club to the City of Winfield and those in need, do hereby proclaim the month of June, 2017 as "Lions Club International Centennial Recognition Month".

(Published in the Cowley Courier Traveler on Friday, June 23, 2017)

**BILL NO. 1740** 

**ORDINANCE NO. 4058** 

## **ORDINANCE**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an agreement by and between the Cities of Winfield and Arkansas City, Kansas, and the Rural Fire District No. 6, Cowley County, Kansas, for certain fire protection services.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

<u>Section 1</u>. The Mayor and Clerk of the City of Winfield, Kansas, are hereby authorized and directed to execute an agreement by and between the Cities of Winfield and Arkansas City, Kansas, and the Rural Fire District No. 6, Cowley County, Kansas, for certain fire protection services according to the provisions of said agreement; a copy of which is attached hereto and made a part hereof.

Section 2. This Ordinance shall be in full force and effect from and after its passage and publication in the official city newspaper.

ADOPTED this 19th day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: \_

William E. Muret, City Attorney

Approved for Commission action:

Jeremy Willmoth, City Manager

#### AGREEMENT

THIS AGREEMENT, made and entered into the \_\_\_\_\_ day of June, 2017, by and between the City of Arkansas City, Kansas; the City of Winfield, Kansas, municipal corporations, hereinafter referred to as "Cities"; and Rural Fire District No. 6, Cowley County, Kansas, hereinafter referred to as "Fire District".

WHEREAS, the said Fire District is established and organized under the provision of K.S.A. 19-3601 to 19-3605, inclusive, and all acts amendatory thereof and supplemental thereto, which district is supervised by a Fire District Board of Trustees appointed and acting pursuant to K.S.A. 19-3612a and all acts amendatory thereof and supplemental thereto.

WHEREAS, the said Fire District desires to receive from the Cities certain fire protection as hereinafter set forth, and the Cities are willing and able to furnish such fire protection, and both the Fire District and the Cities desire to contract with reference thereto.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties thereto, the Fire District and the Cities agree as follows:

#### SECTION ONE TERM

This agreement for fire protection service shall commence on the 1st day of January, 2018, and terminate on December 31, 2020, provided, however, that either party may cancel the agreement by giving notice on or before July 1 of any year except 2020. The agreement would terminate 18 months after said July 1 notice unless the parties agree otherwise in writing. The governing body of the Cities and the Board of Trustees of the Fire District shall meet during the month of May of each year during the effective term of this agreement, to review the terms and conditions of this agreement and the fire protection service furnished thereunder. Any renegotiation for extension or renewal of this agreement shall be completed prior to July 1<sup>st</sup> of the year in which the change would take effect to allow the Cities and Fire District sufficient time to calculate and prepare their respective annual budgets.

#### SECTION TWO FIRE PROTECTION

The Cities, during the effective term of this agreement, shall make reasonable effort to furnish fire fighting and related emergency services, road and weather conditions permitting. They shall utilize paid on-call and regular firemen employed by said Cities and fire fighting apparatus and equipment owned and operated by said Cities as determined by the official in charge. Cities have no obligation to attend fires where the value of the property which might be saved would be less than the cost to the Cities attending such fire. Either or both Cities shall not be obligated to respond to any fire call with equipment fighting a then existing fire, or where in the judgment of the fire official in charge, a condition exists which would likely result

in substantial damage to fire fighting equipment or would deplete available fire fighting forces to an extent of jeopardizing fire protection to the Cities.

#### SECTION THREE ANNUAL FEE

The Fire District shall pay to the Cities all revenues received from a five (5) mil ad valorem property tax levy on all taxable tangible property within the Fire District as authorized by Kansas law, provided such amount shall not be less than Fifty Five Thousand (\$55,000.00) Dollars. The proceeds of such tax levy and any other funds of any kind and source whatsoever to which the Fire District may be entitled as a result of said levy or the ability to levy taxes, shall be paid to the Cities with an equal amount going to each City for fire protection services rendered under this agreement. Said fire protection services payment shall be made by the Fire District within ten (10) days after the dates for distribution of taxes by the County Treasurer as provided by K.S.A. 12-1678a(c)(1). In the event said payments are not made to the Cities within said time, the Cities may terminate this agreement by providing thirty (30) days written notice of such fact to the Fire District.

### SECTION FOUR CONTROLLED BURNINGS

Any person within the territory of the said Fire District desiring to initiate a "controlled burning" of yards, pastures, or deteriorated buildings, must provide notice of and obtain consent to such burning in advance, and give notice of its completion.

## SECTION FIVE

Cities shall not be liable in any way whatsoever to Fire District, its inhabitants, taxpayers, or employees, or to any other person, firm or corporation for failure of its fire department to attend any fire or for failure to extinguish a fire, for damage to goods, property or persons for any reason whatsoever, including but not limited to, negligence. Said Fire District agrees to indemnify and hold Cities harmless for any claim or judgment rendered against it or monies paid out in settlement or payment thereof or in cost of defense.

#### SECTION SIX NONEXCLUSIVE CONTRACT

This agreement shall not be considered as exclusive and the said Fire District acknowledges that the Cities may enter into similar agreements with other fire districts, municipalities, governmental agencies, persons, firms, corporations, or any other instrumentalities.

## SECTION SEVEN DISTRICT'S PUBLICATION EXPENSES

The Cities shall pay legal publication expenses of the Fire Districts which are required of said District to discharge its responsibilities under this agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf respectively by the Mayors of the City of Arkansas City and the City of Winfield, Kansas, duly attested by the respective City Clerks, and by the Chairman of the Board of Trustees of Rural Fire District No. 6, Cowley County, Kansas, duly attested by the Secretary, the date and year first above written.

#### THE CITY OF ARKANSAS CITY, KANSAS

Ву \_\_\_\_\_

Duane Oestmann, Mayor

ATTEST:

Lesley A. Shook, City Clerk

#### THE CITY OF WINFIELD, KANSAS

Ву \_\_\_\_\_

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

RURAL FIRE DISTRICT NO. 6 COWLEY COUNTY, KANSAS

By

Michael Morgan, Chairman Board of Trustees

ATTEST

Shawn McGrew, Secretary

## **A RESOLUTION**

**AUTHORIZING** and directing the Mayor of the City of Winfield, Kansas to execute an agreement between the City of Winfield, Kansas and Bliss Development, LLC, Mark McKenna, Managing Member, for providing the construction of certain improvements for Stonebrook Subdivision, a residential development.

## BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

<u>Section 1.</u> The Mayor and Clerk of the City of Winfield, Kansas, are hereby authorized and directed to execute an agreement between the City of Winfield, Kansas and Bliss Development, LLC, Mark McKenna, Managing Member, for providing the construction of certain improvements for Stonebrook Subdivision, a residential development, a copy of which is attached hereto and made a part hereof the same if fully set forth herein.

Section 2. This resolution shall be in full force and effect from and after its adoption.

**ADOPTED** this 19<sup>th</sup> day of June 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: \_

William E. Muret, City Attorney

Approved for Commission action: \_\_\_\_

Jeremy Willmoth, City Manager/ps

## **A RESOLUTION**

# **AUTHORIZING** the Mayor and the City Clerk of the City of Winfield, Kansas to execute an agreement between USD 465, Winfield, Kansas and the City of Winfield for the sale of real estate.

## NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

<u>Section 1</u>. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute an agreement, attached to and made a part hereof as if fully set forth herein, between the City of Winfield, Kansas and USD 465, Winfield, Kansas for the future transfer of property more specifically described as:

All of Block 188 and all of the vacated right-of-way of Andrews Street adjacent to Block 188, Winfield Original Townsite, Winfield, Cowley County, Kansas.

Section 2. This resolution shall be in full force and effect from and after its passage and adoption.

ADOPTED this 19th day of June, 2017

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form: \_\_\_\_\_

William E. Muret, City Attorney

Approved for Commission action:

Jeremy Willmoth, City Manager/ps

### AGREEMENT FOR THE SALE OF REAL ESTATE

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

by and between USD 465, Winfield, Kansas, hereinafter referred to as Seller, and the City of

Winfield, Kansas, a municipal corporation, hereinafter referred to as Buyer.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties do hereby agree to and with each other as follows:

1. The Seller hereby agrees to sell and convey to the Buyer by a good and

sufficient warranty deed the following described real property situated in Cowley County, Kansas, towit:

All of Block 188 and all of the vacated right-of-way of Andrews Street adjacent to Block 188, Winfield Original Townsite, Winfield, Cowley County, Kansas.

2. The Buyer hereby agrees to purchase and pay to the Seller, as consideration

for the conveyance to it of the above described property, the sum of \$1.00 in cash at closing.

3. The Buyer and Seller have discussed terms and conditions of the sale and

hereby agree to the conditions of the sale, as follows:

a. USD 465 will retain certain items located in the South building of the

subject property, being on the North side, upper and lower wing.

Door hinges off 3 classroom doors Building control boards from the ceiling mounted units and the classroom wall units Automated Logic classroom T-Stats to the building controls Plywood from closets in North classrooms Door closer cylinders Classroom door handles

Classroom uni-vent fan motors Possible removal of a HVAC condensing unit Pump room on South side, remove Automated Logic Building Controls electronic boards

b. The fiber optic connection to the District's building shall be maintained and the parties shall divide equally the out of pocket expenses associated with the bid provided by Vision Communications Kansas, Inc. City will be providing in-kind labor to complete the connections.

c. City will take ownership of the memorial statue located on the Southwest corner of subject property.

d. City will provide, by separate document, a permanent easement from the Northeast corner of subject property extending to the South, so as to provide access to existing sidewalk and entrance of District's building to the East of subject property.

e. City will provide continued access to water for the District's building

f. City's acceptance of the property will be subject to an acceptable

Phase I environmental study.

4. The costs of closing, including title insurance and the preparation of contracts, agreements and a deed, shall be shared equally by the Buyer and Seller.

5. The closing date shall be \_\_\_\_\_\_, 2017, unless mutually agreed to by the parties in writing. The closing agent shall be \_\_\_\_\_\_.

6. Seller will provide a duly executed quitclaim deed for the property described herein on the date of closing, and upon receipt of said deed by the Buyer, Buyer shall take possession of said property.

7. Both the Seller and the Buyer are tax exempt entities, but should a tax

question arise, Seller shall be responsible for any tax owing prior to the date of closing and Buyer shall be responsible for any tax owing after the date of closing.

IN WITNESS WHEREOF, the parties have hereto set their hands this day and year first above written and acknowledge that this Agreement may be executed in counterpart but shall constitute and be one Agreement notwithstanding the fact it may be separately executed.

USD 465

By\_\_\_\_\_ President, Board of Education

SELLER

THE CITY OF WINFIELD, KANSAS

By\_\_\_\_\_

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

BUYER

### **A RESOLUTION**

ACCEPTING and authorizing the filing of a certain permanent easement necessary to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across the real estate in a portion of the Northwest Quarter of Section 34, Township 32 South, Range 5 East of 6th P.M., in the City of Winfield, Cowley County, Kansas.

**WHEREAS,** it was necessary to acquire a certain permanent easement to provide right-of-way for installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances in Cowley County, Kansas; and,

WHEREAS, said easement has been successfully negotiated.

## BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

<u>Section 1.</u> The Mayor and Clerk of the City of Winfield, Kansas, are hereby authorized and directed to accept a certain permanent easement in Cowley County, Kansas, granted by Larry L. Reed individually and as Trustee of the Larry L. Reed Trust, owner, necessary to provide right-of-way for the purpose of installation, construction, maintenance, repair, and removal of the utilities and the necessary appurtenances therefore, in, over, under, and across the real estate described as follows:

A 25 feet wide strip of land located in the Northeast Quarter of Section 34, Township 32 South, Range 5 East of the 6<sup>th</sup> P.M., Cowley County, Kansas, which is described as Commencing the Northwest Corner of Said Northeast Quarter; thence, East along the section line on a assumed bearing of N  $89^{0}$  - 54'-04" E a distance of 622.32 feet to the Point of Beginning that is also the centerline of this easement; thence, on a bearing of S  $21^{0}$ -15"-10" E a distance of 95.44 feet to the Point of Terminus, said point also being 30.58 feet East and 90.10 feet South of the P.O.B.

Section 2. The Clerk of the City of Winfield, Kansas shall record said easement with the Register of Deeds of Cowley County, Kansas.

Section 3. This resolution shall be in full force and effect from and after its adoption.

**ADOPTED** this 19<sup>th</sup> day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved for Commission action: Jeremy Willmoth, City Manager/tp

PERMANENT EASEMENT

I, Larry L. Reed individually and as Trustee of the Larry L. Reed Trust dated 9-7-05, owner, in consideration of the benefit to be obtained from the utility line which is the subject of this easement, payment of the sum of \$1.00 and other valuable consideration, receipt of which is hereby acknowledged, do hereby convey and assign to the CITY OF WINFIELD, Cowley County, Kansas, a permanent easement and right-of-way for the purpose of installation, appurtenances therefor, in, over, under, and across the real estate described as follows: construction, maintenance, repair, and removal of the utility lines and the necessary

A 25 feet wide strip of land located in the Northeast Quarter of Section 34, Township 32 South, Range 5 East of the 6<sup>th</sup> P.M., Cowley County, Kansas, which is described as Commencing assumed bearing of N 89<sup>0</sup>-54'-04" E a distance of 622.32 feet to the Point of Beginning that is also the centerline of this easement; thence, on a bearing of S 21<sup>0</sup>-15"-10" E a distance of 95.44 feet to the Point of Terminus, said point also being 30.58 feet East and 90.10 feet South of the at the Northwest Corner of said Northeast Quarter; thence, East along the section line on an P.O.B.

The amount of money as set forth herein is in full payment for the use of said property and the There are no other agreements, oral or written, between the parties except as set forth undersigned releases the City of Winfield, Kansas, from any claims for damages for acts or omissions pertaining to the purpose as set forth herein except for negligence on the part of said nerein. City.

This easement is binding upon the heirs, executors, administrators, successors, trustees, and assigns of the parties hereto.

2017. June day of 4 Dated this

0 L. Ree Trustee Larry I

STATE OF KANSAS, COWLEY COUNTY, SS.

county and state, personally appeared Larry L. Reed, individually and as Trustee of the Larry L. Reed Trust dated 9-7-05, to me known to be the person(s) named in and who executed the , 2017, before me a notary public in and for said foregoing instrument, and duly acknowledged the execution thereof. June 154 day of On this county

[du4 Votar KATHY J. WAITE Jutery Public - State of Kanses N R D. 102 AV AUL My commission expires:

Accepted and authorized for filing in the Office of Register of Deeds, Cowley County, Kansas, this day of <u>2017</u>, by Resolution No. <u>of the</u> Governing Body of the City of Winfield, Kansas.

ATTEST:

Brenda K. Butters, Mayor

Brenda Peters, City Clerk



PRODUCED BY THE CITY OF WINFIELD ENGINEERING / G.I.S. DEPT. USING THE BEST AVAILABLE DATA AS OF 5/19/2017. THE CITY OF WINFIELD IS NOT RESPONSIBLE FOR ERRORS OR OMISSIONS. AERIAL PHOTOS CURRENT AS OF 2011.

## A RESOLUTION

AUTHORIZING and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute a contract for Project Nos. 11-DI 908 & 17-TI 829 for street and drainage improvements between the City of Winfield, Kansas and APAC-Kansas, Inc., Shears Division Wichita, Kansas.

**WHEREAS**, proposals for the street and drainage improvements were advertised, opened, and read aloud on June 7, 2017 at 1:30 pm; and,

**WHEREAS,** APAC-Kansas, Inc., Shears Division Wichita, Kansas, submitted the apparent lowest bid;

## NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:

Section 1. The Mayor and Clerk of the City of Winfield, Kansas are hereby authorized and directed to execute a contract for the amount of four hundred seventy-one thousand, five hundred dollars and sixty-two cents (\$471,500.62) for Project Nos. 11-DI 908 & 17-TI 829 for street and drainage improvements on 5th Avenue from Main Street to Loomis Street and the 8th Avenue & College Street intersection; between the City of Winfield and APAC-Kansas, Inc., Shears Division Wichita, Kansas, a copy of which is attached hereto and made a part hereof the same as if fully set forth herein.

Section 2. This resolution shall be in full force and effect from and after its passage and approval.

**ADOPTED** this 19th day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

Approved as to form:

William E. Muret, City Attorney

Approved for Commission action:

Jeremy Willmoth, City Manager/rt

## SECTION 00 52 00 AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between	City of Winfield, KS	("Owner") and
APAC – Kansas, Inc, Shear Division		("Contractor").

Owner and Contractor hereby agree as follows:

## **ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of 225 Ln. Ft. Storm Sewer; 8 Storm Sewer Structures; 226 Sq. Yds. Concrete Ditch Liner; 1,095 Ln. Ft. Curb & Gutter; 484 Sq. Yds. Concrete Pavement; 588 Tons HMA; 524 Ln. Ft. 8" Water Line; incidental construction thereto.

73 Ln. Ft. 6" Storm Sewer 162 Ln. Ft. Curb & Gutter; 98 Tons HMA and incidental construction thereto

## **ARTICLE 2 – THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Fifth Avenue Improvements (Main Street to Loomis Street) and Intersection Improvements (Eighth Avenue to College Street)

## **ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by Professional Engineering Consultants, P.A.
- 3.02 The Owner has retained Professional Engineering Consultants, P.A. ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

## **ARTICLE 4 – CONTRACT TIMES**

- 4.01 Time of the Essence
  - A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

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- 4.02 Contract Times: Calendar Days
  - A. The Work will be substantially completed within 100 days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 30 days after the date of substantial completion.
- 4.03 Liquidated Damages
  - A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
    - 1. Substantial Completion: Contractor shall pay Owner \$600 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
    - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$600 for each day that expires after such time until the Work is completed and ready for final payment.
    - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
- 4.04 Special Damages
  - A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial and Final Completion according to the Contract Times.

## **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
  - A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

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## **ARTICLE 6 – PAYMENT PROCEDURES**

- 6.01 Submittal and Processing of Payments
  - A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 Progress Payments; Retainage
  - A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the first day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
    - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
      - a. <u>90</u> percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
      - b. <u>90</u> percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to <u>100</u> percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions.
- 6.03 Final Payment
  - A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## **ARTICLE 7 – INTEREST**

7.01 All amounts not paid when due shall bear interest at the rate of <u>18</u> percent per annum.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

## **ARTICLE 9 – CONTRACT DOCUMENTS**

- 9.01 Contents
  - A. The Contract Documents consist of the following:
    - 1. This Agreement (pages 1 to 6, inclusive).
    - 2. Performance bond (EJCDC<sup>®</sup>C-610, pages <u>1</u> to <u>3</u>, inclusive).
    - 3. Payment bond (EJCDC<sup>®</sup>C-615, pages <u>1</u> to <u>3</u>, inclusive).
    - 4. Statutory bond (pages 00 61 15-1 to 00 61 15-2, inclusive).
    - 5. General Conditions (pages <u>1</u> to <u>66</u>, inclusive).
    - 6. Supplementary Conditions (pages <u>1</u> to <u>8</u>, inclusive).
    - 7. Specifications as listed in the table of contents of the Project Manual.
    - 8. Drawings (not attached but incorporated by reference) consisting of <u>50</u> sheets.
    - 9. Addenda (numbers <u>1</u> to <u>3</u>, inclusive).

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- 10. Exhibits to this Agreement (enumerated as follows):
  - a. The Contractor's Bid (pages 00 41 45-1 to 00 41 45-6)
- 11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed.
  - b. Work Change Directives.
  - c. Change Orders.
  - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

- 10.01 Terms
  - A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- 10.02 Assignment of Contract
  - A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 10.03 Successors and Assigns
  - A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 10.04 Severability

170050-000 170054-000 EJCDC<sup>®</sup> C-520 (2013 Edition) Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) 00 52 00 - 5

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 10.05 Contractor's Certifications
  - A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
    - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
    - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
    - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
    - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:	CONTRACTOR:	
City of Winfield, KS	APAC – Kansas, Inc, Shear Division	
Ву:	By:	
Title:	Title: (If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)	
Attest:	Attest:	
Title:	Title:	
170050-000	Agreement Between Owner and Contractor	

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Address for giving notices:	Address for giving notices:
City Hall	3511 S. West Street
200 E. 9th	Wichita, KS 67217
Winfield, KS 67156	

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

END OF SECTION

#### A RESOLUTION

AUTHORIZING the Mayor and Clerk of the City of Winfield, Kansas to execute a Purchase Agreement with Pierce Manufacturing Inc., a Wisconsin Corporation for a Fire Apparatus and any associated equipment pursuant to specifications.

Municipality/Lessee: Winfield, Kansas

Principal Amount Expected To Be Financed: \$750,000

WHEREAS, the Municipality is a political subdivision of the State in which Municipality is located (the "State") and is duly organized and existing pursuant to the Constitution and laws of the State.

WHEREAS, pursuant to applicable law, the governing body of the Municipality ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the Municipality.

WHEREAS, the Governing Body hereby finds and determines that the execution of one or more Master Lease-Purchase Agreements ("Leases") in the principal amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the Municipality.

WHEREAS, PNC Equipment Finance, LLC ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Ordained by the Governing Body of the Municipality:

Section 1. Either one of the MAYOR or CITY MANAGER (each an "Authorized Representative") acting on behalf of the Municipality, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Municipality. Each Authorized Representative acting on behalf of the Municipality is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Municipality to execute and deliver agreements and documents relating to the Leases on behalf of the Municipality.

Section 3. The aggregate original principal amount of the Leases shall not exceed the amount stated above and shall bear interest as set forth in the Leases and the Leases shall contain such options to purchase by the Municipality as set forth therein.

Section 4. The Municipality's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the Municipality's obligations under the Leases shall not constitute general obligations of the Municipality or indebtedness under the Constitution or laws of the State.

Section 5. As to each Lease, the Municipality reasonably anticipates to issue not more than \$10,000,000 of tax-exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the current calendar year in which each such Lease is issued and hereby designates each Lease as a qualified tax-exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 6. This resolution shall take effect immediately upon its adoption and approval. ADOPTED AND APPROVED on this 19<sup>th</sup> day of June, 2017.

(SEAL)

Brenda K. Butters, Mayor

ATTEST:

Brenda Peters, City Clerk

The undersigned Secretary/Clerk of the above-named Municipality hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Municipality, that the foregoing resolutions were duly adopted by said Governing Body of the Municipality at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

LESSEE: CITY OF WINFIELD, KANSAS

[SEAL]

Signature of Secretary/Clerk of Municipality

Print Name: Brenda Peters

Official Title: City Clerk

Date: June 19, 2017



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 <u>City of Winfield, Kansas</u>, a <u>Municipality</u> ("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. <u>Purpose</u>. This Agreement sets forth the terms and conditions of Pierce's sale of the Product to the Customer.

3. <u>Term of Agreement</u>. 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. <u>Purchase and Payment</u>. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$750000.00 ("Purchase Price"). Prices are in U.S. funds.

5. <u>Future Changes</u>. 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. <u>Agreement Changes</u>. 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. <u>Cancellation/Termination</u>. 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. <u>Delivery, Inspection and Acceptance</u>. (a) <u>Delivery</u>. Delivery of the Product is scheduled to be within <u>10-11</u> months of the Effective Date of this Agreement, F.O.B. Winfield Kansas. Risk of loss shall pass to Customer upon Delivery. (b) <u>Inspection</u> and <u>Acceptance</u>. 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. <u>Notice</u>. 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.	Customer
Director of Order Management	City Of Winfield
2600 American Drive	
Appleton WI 54912	
Fax (920) 832-3080	

10. <u>Standard Warranty</u>. 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. <u>Disclaimer</u>. 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. <u>Exclusions of Incidental and Consequential Damages.</u> 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:

\$1,000,000
\$1,000,000
\$25,000,000
\$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. <u>Indemnity</u>. 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. <u>Force Majeure</u>. 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. <u>Default</u>. 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. <u>Manufacturer's Statement of Origin</u>. 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. <u>Independent Contractors</u>. 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. <u>Assignment</u>. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. <u>Governing Law</u>; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of Kansas.

19. <u>Facsimile Signatures</u>. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. <u>Entire Agreement</u>. 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. <u>Conflict</u>. 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. <u>Signatures</u>. 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 Winfield
Name:	Name:
Title:	Title:
Date:	Date: <u>6/15/2017</u>

#### EXHIBIT A

#### PURCHASE DETAIL FORM

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

Date: 6-15-17

Customer Name: City of Winfield

Quantity	Chassis Type	Body Type	Price per Unit
1	Enforcer	Pumper	\$750,000.00
			\$
			\$
			\$
			\$

Price includes the interest and chassis discounts.

Warranty Period: Standard Pierce warranties apply

Training Requirements:

Other Matters: 100% performance bond provided

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: 10 year turn-in lease, PNC Financing will pay 100% pre-pay to get the above mentioned discounts.

[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, but no longer than sixty (60) days after Delivery. If the dispute 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. 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 <u>6-15-17</u>, 2017 BETWEEN PIERCE MANUFACTURING INC. AND <u>City of Winfield</u>, <u>Kansas</u> 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

ALL STANDARD PIERCE WARRANTIES APPLY.

#### EXHIBIT C

#### PIERCE PROPOSAL

ONE (1) OR MORE 2018 PIERCE ENFORCER PUMPER(S) PER PROPOSAL INCLUDING LOOSE EQUIPMENT.



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 <u>City of Winfield, Kansas</u>, a <u>Municipality</u> ("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. <u>Purpose</u>. This Agreement sets forth the terms and conditions of Pierce's sale of the Product to the Customer.

3. <u>Term of Agreement</u>. 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. <u>Purchase and Payment</u>. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$750000.00 ("Purchase Price"). Prices are in U.S. funds.

5. <u>Future Changes</u>. 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. <u>Agreement Changes</u>. 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. <u>Cancellation/Termination</u>. 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. <u>Delivery, Inspection and Acceptance</u>. (a) <u>Delivery</u>. Delivery of the Product is scheduled to be within <u>10-11</u> months of the Effective Date of this Agreement, F.O.B. Winfield Kansas. Risk of loss shall pass to Customer upon Delivery. (b) <u>Inspection</u> and <u>Acceptance</u>. 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. <u>Notice</u>. 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.	Customer
Director of Order Management	City Of Winfield
2600 American Drive	
Appleton WI 54912	
Fax (920) 832-3080	

10. <u>Standard Warranty</u>. 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. <u>Disclaimer</u>. 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. <u>Exclusions of Incidental and Consequential Damages.</u> 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:

\$1,000,000
\$1,000,000
\$25,000,000
\$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. <u>Indemnity</u>. 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. <u>Force Majeure</u>. 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. <u>Default</u>. 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. <u>Manufacturer's Statement of Origin</u>. 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. <u>Independent Contractors</u>. 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. <u>Assignment</u>. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. <u>Governing Law</u>; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of Kansas.

19. <u>Facsimile Signatures</u>. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. <u>Entire Agreement</u>. 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. <u>Conflict</u>. 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. <u>Signatures</u>. 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 Winfield	
Name:	Name:	
Title:	Title:	
Date:	Date: <u>6/15/2017</u>	

#### EXHIBIT A

#### PURCHASE DETAIL FORM

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

Date: 6-15-17

Customer Name: City of Winfield

Quantity	Chassis Type	Body Type	Price per Unit
1	Enforcer	Pumper	\$750,000.00
			\$
			\$
			\$
			\$

Price includes the interest and chassis discounts.

Warranty Period: Standard Pierce warranties apply

Training Requirements:

Other Matters: 100% performance bond provided

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: 10 year turn-in lease, PNC Financing will pay 100% pre-pay to get the above mentioned discounts.

[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, 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 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 <u>6-15-17</u>, 2017 BETWEEN PIERCE MANUFACTURING INC. AND <u>City of Winfield</u>, <u>Kansas</u> 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

ALL STANDARD PIERCE WARRANTIES APPLY.

#### EXHIBIT C

#### PIERCE PROPOSAL

ONE (1) OR MORE 2018 PIERCE ENFORCER PUMPER(S) PER PROPOSAL INCLUDING LOOSE EQUIPMENT.