



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

12

2. Council Meeting Date:
August 14, 2008

TO: **MAYOR & COUNCIL**

3. Date Prepared: July 29, 2008

THROUGH: **CITY MANAGER**

4. Requesting Department: Fire

5. **SUBJECT:** Settlement Agreement to contract FA7-065-2327 for the purchase of fire apparatus (engines) from Pierce Manufacturing Inc.

6. **RECOMMENDATION:** Recommend approval of Settlement Agreement to contract FA7-065-2327 for the purchase of fire apparatus (engines) from Pierce Manufacturing Inc.

7. **HISTORICAL BACKGROUND/DISCUSSION:** On October 26, 2006, Council approved contract FA7-065-2327 for the purchase of one Fire Apparatus. On December 13, 2007, the Council approved an amendment to the contract to authorize the purchase of two additional fire engines. The fire engine ordered pursuant to the original agreement was delivered late and Liquidated Damages are \$53,400. Staff is recommending approval of the Settlement Agreement, which authorizes enhancements valued at \$51,543 to the three apparatus in lieu of actual damages. The difference will be assessed as Liquidated Damages.

8. **EVALUATION PROCESS:** The cost of recommended enhancements to this and two future apparatus will be offset by Liquidated Damages. The recommended Settlement Agreement will provide enhancements that increase safety, efficiency and longevity, to the current apparatus (Pierce Production Number 19360) and to two (2) apparatus in production (Pierce Production Numbers 20738-01 and 20738-02). Total costs of the changes to the three (3) apparatus are \$51,543.

9. **FINANCIAL IMPLICATIONS:** There are no additional costs associated with the Settlement Agreement.

10. **PROPOSED MOTION:** Move to approve Settlement Agreement relating to Liquidated Damages for contract FA7-065-2327 for the purchase of fire apparatus (engines) from Pierce Manufacturing Inc.

APPROVALS

11. Requesting Department

Jim Johnson

12. Department Head

Tom Carlson

13. Procurement Officer

Mike Mandt, CPPB

14. City Manager

W. Mark Pentz

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this ____ day of August 2008, by and between Pierce Mfg. Inc. ("Contractor") and the City of Chandler, a political subdivision of the State of Arizona ("City"), and in consideration of the mutual covenants and conditions set forth herein, the undersigned agree as follows;

RECITALS

1. On October 26, 2006, the Council authorized and City entered into Agreement Number FA7-065-2327 with Contractor for the purchase of Fire Apparatus. The Agreement was awarded for a term of one year with provisions to extend four additional years.
2. On November 6, 2006, the City ordered a fire engine (Pierce Production Number 19360) for the amount of five hundred thirty nine six hundred sixty three dollars and thirty-one cents (\$539,663.31).
3. On December 13, 2007, the City Council approved an amendment to the Agreement between the City and Contractor to authorize the purchase of two additional fire apparatus.
4. On December 14, 2007, the City executed Amendment Number One to the Agreement. This Amendment authorized the purchase of two additional fire engines (Pierce Production Numbers 20738-01 and 20738-02) for an amount of one million one hundred sixty two thousand five hundred seventy four dollars (\$1,162,574).
5. The fire engine ordered pursuant to the original agreement was delivered July 11, 2008. The required delivery date was October 3, 2007.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, and other good and valuable consideration, the receipt and adequacy of which the parties hereby acknowledged, the contractor and City agree as follows:

AGREEMENT

1. City and Contractor agree that the delivery date of July 11, 2008, for Pierce Production Number 19360 was late and that Section 4.4 of the Agreement, the Liquidated Damages provision, is applicable.
2. City and Contractor agree that there were 104 days of production days that were not the fault of the Contractor. City and Contractor agree that that the Liquidated Damages will be based on 178 days of delay caused by the Contractor for a total Liquidated Damages at \$300 per day of \$53,400.
3. Pursuant to Section 2 of the contract, the City and Contractor have agreed to changes, in the three fire engines purchased from Pierce, Production Numbers 19360, 20738-01 and 20738-02 to enhance safety, efficiency and longevity. These changes and applicable costs are set forth on Exhibit A hereto and total fifty one thousand five hundred and forty three dollars (\$51,543.00)
4. In Lieu of having the full Liquidated Damages deducted from the final payment to Pierce Production Number 19360 or paid directly to the City as required by the Agreement, Contractor and City agree that Contractor will provide the changes to all three apparatus (Pierce Production Numbers 19360, 20738-01 and 20738-02) as set forth in Exhibit A at no additional cost to the City. Additionally, the Contractor agrees to reduce the invoice amount of the Pierce Production Number 19360 by one thousand eight hundred fifty seven dollars (\$1,857), the remaining amount of Liquidated Damages owed by Contractor.
5. This Agreement shall be binding upon and inure to the benefit of the City and Contractor hereto and their respective successors and assigns.
6. This Agreement shall not constitute a waiver of any rights that exist pursuant to the Agreement and Amendment Number One, including any Liquidated Damages that may be incurred in the delivery of Pierce Production Numbers 20738-01 and 20738-02 or any other fire engine ordered pursuant to the Agreement or any subsequent amendment.
7. This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof, and any prior or contemporaneous understandings, representations, warranties, agreements, arrangements and negotiations are superceded hereby.

8. Each party executing this Agreement warrants that he or she has read the Agreement; has obtained the advice of legal counsel with respect to the terms of the Agreement; and is legally empowered and authorized to execute the Agreement on behalf of the party for which he or she acts.
9. This Agreement may be executed through the use of duplicate originals and shall not be effective for and against any party in the absence of signature by any other party. Facsimile signatures shall be as effective binding as original signatures.
10. The parties hereto have executed this Agreement as of the date and year first above written.

CITY OF CHANDLER

 Mayor Date

ATTEST:

 City Clerk

APPROVED AS TO FORM:

 City Attorney

PIERCE MANUFACTURING INC.,

By: _____
 Signature

ATTEST: If Corporation

 Secretary

SEAL

Exhibit A

Changes to Current Apparatus (Pierce Production Number 19360)	Cost
Roll Over protection	\$ 9,000.00
Change to Rear Inlets	\$ 4,126.00
Adding Lettering	\$ 3,578.00
Intercom and radio Wiring	\$ 1,800.00
Mercedes style booster hose	\$ 100.00
Change pike pole	\$ 25.00
Butterfly latches	\$ 300.00
Plate with reflective stripe	\$ 150.00
Dropping wires inside rear walls	\$ 500.00
Total Revisions	\$ 19,579.00

Changes to Apparatus In Production (Pierce Production Numbers 20738-01 and 20738-02)	Cost Per Apparatus
Add Stainless Steel door panels	\$ 760.00
Add Stainless Steel trim panel over officer side electrical access panel	\$ 96.00
Add painted plate at engine tunnel (rear). Paint interior color	\$ 326.00
Delete loose glove box 05532250.	\$ (352.00)
Delete storage compartment 0532251.	\$ (391.00)
Add radio compartment under forward facing rear seat. Seat riser raised 3". Side louvers will be provided. Add slide out tray.	\$ 950.00
First In will furnish 200 feet of 3/4" Red Reeltex booster hose.	\$ 100.00
Add Stainless Steel Lug Nut Covers	\$ 35.00
Add (3) air tank drains	\$ 480.00
Add plastic label on each side of fuel doors	\$ 87.00
Delete one set of manuals	\$ (300.00)
Warning light and Headlights in a common bezel. Impel style front end.	\$ 697.00
Lower speedlays	\$ 761.00
Water Tank , 490 Gallons.	\$ (143.00)
Add engraved plates to both sides of fill tower	\$ 118.00
Add engraved plates to both sides of lid on Foam Towers (2)	\$ 176.00
Add Turtle Tile to all trays and compartment floors.	\$ 2,478.00
Add cable latch to tilt tray	\$ 28.00
Add (3) platform slide out steps	\$ 2,334.00
Delete Passenger side hatch compartment with special sheet metal modifications for vertical exhaust	\$ (2,000.00)
Add 1/4 turn battery latches to Hatch	\$ 150.00
Add 28" deep air bottle storage	\$ 800.00
Delete (2) rear spotlights	\$ (177.00)
Add brow light covers	\$ 296.00
Graphics, Like Dash Pumper, (\$3,578 Dash x 1.0287 = \$ 3,680.00)	\$ 3,680.00

Script lettering on each side of cab	\$	826.00
ROX deleted = was not charged for	\$	-
Stripe, reflective 2" tailboard	\$	140.00
lettering reflective 24" cab roof	\$	826.00
Add Rear Chevrons	\$	826.00
Add Frontal Impact Protection	\$	<u>2,375.00</u>
Total (per each Apparatus)	\$	15,982.00
Grand Total Revisions For All Three Apparatus	\$	51,543.00