

PURCHASE AGREEMENT

THIS CONTRACT is made and entered into on _____, by and between ROSENBAUER SOUTH DAKOTA, LLC, a corporation, with a business address of 100 Third Street, Lyons, South Dakota 57041, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

W I T N E S S E T H:

WHEREAS, the Parties desire to enter into a Contract for the purchase by CITY of THREE (3) 2015 3/16" FX 1500 GPM PUMPERS fire engines (hereinafter, each a "VEHICLE" and together the "VEHICLES"), pursuant to the NJPA Cooperative Agreement, City Council Motion No. _____, approved on _____.

NOW THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:

- (a) To furnish VEHICLES to CITY in accordance with City Council Motion No. _____.
- (b) The term of this Agreement shall begin on _____, and shall continue until CONTRACTOR completes construction and delivery of VEHICLES to CITY. Warranty provision and price guarantee for parts will survive expiration and shall apply per Section 3 of this Agreement.
- (c) The VEHICLES shall be delivered by CONTRACTOR to CITY on or before 360 days from date of Purchase Order. In the event CONTRACTOR fails to make timely delivery of the VEHICLES within 360 days from date of Purchase Order, the sum of \$100.00 per day shall be deducted from the invoice price for each calendar day that delivery is late. Delivery of the VEHICLES is not complete unless and until the VEHICLES are operational and functioning when delivered as specified in this CONTRACT and other documents incorporated by reference, including but not limited to the specification documents completed by CITY and CONTRACTOR; as well as the performance levels claimed by CONTRACTOR in its general informational and advertising mediums related to the VEHICLES.
- (d) All terms and conditions of this purchase are the same as those found in National Joint Powers Alliance (NJPA) Cooperative Contract #011714 and City of Stockton's Council Motion No. _____, which are hereby incorporated and made a part of this CONTRACT.

2. CONTRACTOR agrees to defend, indemnify and hold harmless the CITY against any and all liabilities, claims, demands, damages, or injuries to any person or property arising from CONTRACTOR's performance under this Contract.

3. CITY agrees to pay to CONTRACTOR the invoice price of **ONE MILLION, FOUR-HUNDRED AND THIRTEEN THOUSAND, NINE-HUNDRED AND NINE DOLLARS (\$1,413,909.00)** minus (i) any late delivery penalties as set forth in paragraph 1(c) above, upon delivery of the VEHICLES; and (ii) any early payment discounts optioned to CITY for the VEHICLE chassis elements. CONTRACTOR agrees that this contract is a "zero-dollars-down" contract and that no

funds shall be paid to CONTRACTOR prior to delivery and acceptance by the CITY's City Manager, of the VEHICLES, unless however, CITY elects to utilize any early payment discounts described in the foregoing sentence.

CONTRACTOR warrants that for two (2) years, the unit will be free of defects in design materials and workmanship. The two (2) year period shall commence upon the date the CITY provides in writing to CONTRACTOR acceptance of the unit. Moreover, for the active lifetime of any CONTRACTOR unit(s), whether purchased under this CONTRACT and operated by the CITY, replacement parts will be provided by CONTRACTOR'S authorized dealer geographically nearest to the CITY at no more than 10% above such dealer's cost.

It is the policy of the CITY to pay all applicable California sales/use tax directly to the State Board of Equalization (BOE) pursuant to California Revenue and Taxation Code 7051.3. The CITY will self-accrue all sales/use tax on purchases made from out-of-state vendors.

Sales and use tax on purchases made by the CITY from all companies located outside California and whose products are shipped from out of state will be remitted to the BOE directly by the CITY under permit number **SR KHE 28-051174 DP**. **Please do not include sales/use tax on the invoice that you submit to the CITY**

4. Neither this Contract, nor any part hereof, nor any monies due or to become due hereunder, may be assigned by CONTRACTOR without the prior written approval of CITY.

5. CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with all necessary information and assistance to complete such audit.

6. It is expressly understood and agreed by and between the parties hereto that a waiver of any conditions of this Contract shall not be considered a waiver of any of the other conditions hereof.

7. It is further understood and agreed by and between the parties hereto that time is of the essence of this Contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

**ROSENBAUER SOUTH DAKOTA LLC,
"CONTRACTOR"**

By 
Harold Boer, CEO

46-0448012
Tax Identification Number

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Dated: _____

JOHN M. LUEBBERKE
CITY ATTORNEY

CITY OF STOCKTON, a municipal
corporation ("CITY")

By _____
CITY ATTORNEY

By: _____
CITY MANAGER