



APPARATUS SALES AGREEMENT

This Apparatus Sales Agreement (“**Agreement**”) sets forth the terms and conditions under which HME, INC., a Michigan corporation of 1950 Byron Center Ave., Wyoming, Michigan 49519 (“**HME**”) will sell an apparatus as further identified on *Schedule A* (“**Apparatus**”) to the following buyer (“**Buyer**”) and Buyer will purchase the Apparatus.

Buyer:

City of El Mirage		
(Name of Buyer)		
10000 N. El Mirage Road		
(Street)		
El Mirage	AZ	85335
(City)	State	Zip)
Attention: _____		
Telephone No. _____		
E-mail Address: _____		

This Agreement is comprised of this Signature Page, the attached *Schedule A*, and the attached General Terms and Conditions.

The parties have executed this Agreement based on the dates of the signatures below.

HME, INC.

City of El Mirage

(Type or Print Buyer’s Name)

By: _____
(HME Signature)

By: _____
(Buyer Signature)

(Type or Print Individual’s Name)

(Type or Print Individual’s Name)

Its: _____
(Type or Print Individual’s Title)

Its: _____
(Type or Print Individual’s Title)

Date: _____

Date: _____

SIGNATURE PAGE

SCHEDULE A

APPARATUS INFORMATION

Apparatus Type:	HME Mdl SF22 Pumper Job # 23925
Date of Specifications:	January 25, 2023
Price:	\$849,940.85
Pre-Construction Conference Date: (if needed)	N/A
Expected Delivery Date:	Estimated completion of custom pumper within 90 - 120 days after receipt of order. Estimated completion of requested modifications, provision of equipment and final delivery to be within an additional 75 – 90 days.
Additional Terms:	<p>As agreed upon with customer for this contract</p> <ol style="list-style-type: none"> 1. <u>Conflict of Interest.</u> This Agreement may be cancelled by the City pursuant to A.R.S. § 38-511. 2. <u>Israel.</u> To the extent A.R.S. § 35-393 through § 35-393.03 is applicable, HME certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of goods and services from Israel, as that term is defined in A.R.S. § 35-393. 3. <u>China.</u> Pursuant to and in compliance with A.R.S. § 35-394, HME agrees and certifies that it does not currently, and agrees for the duration of this Agreement that it will not, use: (i) the forced labor of ethnic Uyghurs in the People’s Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. HME also agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City’s action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such an action.

GENERAL TERMS AND CONDITIONS

1. **Change Orders.**

(a) Subject to the limitation below, for a period of 8 weeks after the execution of this Agreement HME agrees to review and respond to requested changes to the Apparatus by Buyer upon Buyer submission of a written change request describing the exact nature of the changes requested. HME will review such a request and advise Buyer of any changes to the price for the Apparatus and the delivery schedule for the Apparatus caused by the requested changes. If Buyer and HME agree to the changes, including the changes, if any, to the price and delivery date, then HME and Buyer will execute a change order setting for the terms of the changes.

(b) Buyer may not request changes in major components, Apparatus configuration, or other changes that may change the major components or configuration of the Apparatus, (e.g.: engine, transmission, axles, water tank, body, or fire pump).

2. **Alternative Components.** If HME is not able to obtain specific brand name components (“**Named Components**”) set forth in the specifications identified on *Schedule A* (“**Specifications**”) or if waiting for such Named Components will cause a delay in construction or delivery of the Apparatus, HME will notify Buyer of the delay. HME agrees to make reasonable efforts to locate alternative sources of the Named Components provided HME will have no liability for any delay caused by issues in obtaining the Named Components. HME will not substitute a Named Component without the consent of Buyer. HME has the right to substitute raw materials and other components, excluding the Named Components, identified in the Specifications that do not affect the overall appearance or function of the Apparatus.

3. **Delivery, Inspection, Title and Risk of Loss.**

(a) HME agrees the Apparatus will be ready for delivery by the expected delivery date set forth in *Schedule A* (“**Delivery Date**”). The Delivery Date assumes that (i) Buyer has paid for the Apparatus according to this Agreement; (ii) if a pre-construction conference date is set forth in *Schedule A* that such conference is satisfactorily completed by both parties; and (iii) that no changes have been requested to the Specifications. If any of these conditions are not satisfied, the Delivery Date may be extended by HME.

(b) Unless otherwise specified on *Schedule A*, delivery of the Apparatus shall be EXW (Incoterms 2020) HME’s facility in Wyoming, Michigan. HME will provide Buyer with a notice of when the Apparatus is ready for delivery.

(c) Buyer agrees to inspect the Apparatus and remove the Apparatus from HME’s facility within seven days of notice from HME that the Apparatus is ready for delivery.

(d) Title and risk of loss for the Apparatus shall pass to Buyer upon HME’s notice to Buyer that the Apparatus is ready for delivery at HME’s facility. Transportation and applicable insurance coverage upon finished truck leaving HME until end delivery to the customer, shall be the responsibility of RedSky Emergency Vehicles.

4. **Force Majeure.** HME is not liable for unforeseeable penalties or delays due to strikes, failures to obtain materials, fires, accidents, force majeure, or any other causes beyond HME’s reasonable control, including, without limitation, (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) industrial disturbances.

5. **Price and Payment.**

(a) Subject to any changes as provided in this Agreement or as agreed to by Buyer and HME under the terms of this Agreement, the price for the Apparatus is set forth on *Schedule A* (“**Price**”). The Price is in U.S. dollars, and does not include any taxes, freight, duty, tariffs, assessments or similar charges, which shall be Buyer’s sole responsibility and liability. The Price is subject to increase because of changes in market conditions or increases in HME’s cost of raw materials or components. HME will provide the Buyer with notice of any change to the Price based on increases to HME’s cost.

(b) Unless otherwise specified on *Schedule A*, Buyer shall pay the Price in full upon delivery of the Apparatus to Buyer at HME’s facility. Unless otherwise specified on *Schedule A*, the Apparatus will not leave HME’s facility until payment has been received in full for the Apparatus. All payments shall be in U.S. currency. HME reserves the right to assess finance charges on any past due amounts at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is less. HME shall be entitled to recover its reasonable attorney fees and costs incurred in connection with collection of any past due amounts owing under this Agreement.

(c) HME will not accept any payment made to HME’s sales representatives. All payments of the Price will be made exclusively to HME at 1950 Byron Center Avenue, Wyoming, Michigan 49519, Attention: Accounts Receivable.

6. **Warranty.** HME’s exclusive warranty for the Apparatus is set forth in the Specifications.

7. **Use of Equipment; Indemnification.** Buyer agrees that the Apparatus shall be used (a) strictly in accordance with all user manuals and written instructions provided by HME; (b) in accordance with all applicable laws, regulations and requirements; and (c) in a proper manner. Buyer agrees that none of the safety guards or other safety aspects of the Apparatus will be removed, altered or bypassed. Buyer agrees to indemnify and hold HME harmless from and against all claims, damages and liabilities (including reasonable attorney fees and costs) arising out of or related to (i) any improper use or misuse of the Apparatus; (ii) any breach by Buyer of any of its obligations in this paragraph; or (iii) any negligence, willful misconduct or other wrongful act or omission by Buyer, its employees or anyone under Buyer’s control.

8. **Limitation on Damages.**

(a) EXCEPT AS SET FORTH IN THE SPECIFICATIONS, HME DOES NOT MAKE ANY WARRANTY AS TO THE APPARATUS AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE APPARATUS. HME shall not have any tort liability to Buyer or any other person with respect to any of the Apparatus and shall not be liable for consequential, incidental, special, exemplary, indirect or punitive damages arising from any product defect, delay, nondelivery, recall or other breach. Buyer shall not have any right of rejection or of revocation of acceptance of the Apparatus.

(b) IN ADDITION TO THE LIMITATIONS IN THE PRECEDING CLAUSE, HME’S TOTAL LIABILITY UNDER THIS AGREEMENT OR RELATED TO THE APPARATUS SHALL NOT EXCEED THE COST OF PROVIDING REPLACEMENT ITEMS OF THE APPARATUS FOR THOSE ITEMS OF APPARATUS NOT COMPLYING WITH THE TERMS OF THIS AGREEMENT OR, AT HME’S ELECTION, TO THE REFUND OR CREDITING OF BUYER OF THE AMOUNT EQUAL TO THE PRICE PAID BY BUYER FOR THE APPARATUS.

9. **Permits and Compliance.** HME is not responsible for obtaining any permit, inspection or license that is required for the operation of the Apparatus or placing the Apparatus in service in a particular jurisdiction. Except as set forth in the Specifications, HME does not make any promise or representation that the Apparatus will conform to any law, ordinance, regulation, code or standard.

10. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that HME creates or develops in the course of HME's design, development or manufacture of the Apparatus and all drawings and specifications that HME provides to Buyer ("**Intellectual Property**") shall be HME's sole property, and Buyer assigns, and agrees to assign, to HME all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about HME's business, operations or activities, except to the extent necessary for Buyer to use the Apparatus.

11. **Cancellation.** Buyer does not have any right to cancel its agreement to buy the Apparatus from HME unless HME increases the Price. If HME increases the Price, Buyer will have fifteen days from the date of Buyer's receipt of the notice of the increase in the Price to cancel this Agreement. If HME agrees in writing to permit cancellation of this Agreement for any other reason, then Buyer shall immediately pay to HME a cancellation charge in an amount HME determines taking into consideration (a) the realizable value to HME of any standard components that HME purchased or ordered before cancellation, (b) the realizable scrap value to HME of the remaining material and tooling that HME purchased, fabricated or ordered before cancellation and (c) any direct labor costs that HME incurred. HME has the right to terminate this Agreement by providing notice to Buyer upon the occurrence of any events described in the paragraph titled "Force Majeure" or if HME is unable to obtain raw materials or components for the Apparatus in a timely or reasonable manner or otherwise produce the Apparatus. Upon termination of this Agreement, Buyer shall deliver to HME all materials relating to the Apparatus including, without limitation, all diagrams, drawings, blueprints, memoranda, specifications, and related documents. Buyer shall not retain any photocopies or other facsimiles of any of the materials.

12. **Tag-On / Additional Orders.** At its sole discretion, HME may allow the terms of this Agreement to be extended to both Buyer and similar agencies for the purchase of a similar Apparatus under similar terms for a period of one (1) year from the date of the execution of this Agreement. HME may adjust the Price to account for equitable Price adjustments associated with the change in the cost of the materials used to produce the Apparatus. Such adjustments will be based upon the Producer Price Index (PPI) for fire trucks and/or heavy transportation equipment or by itemizing Price changes expected by HME from the component vendors. If there are any changes between the Apparatus purchased via this Agreement and any subsequent orders, those changes must be documented via properly signed and executed change orders, including any necessary adjustments to the Price. If the purchasing agency is not Buyer, a separate Agreement must be executed under the terms of this Agreement to complete the additional purchases.

13. **HME's Rights.** HME has all rights and remedies that applicable law gives to sellers. HME's rights and remedies are cumulative, and HME may exercise them from time to time. HME's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.

14. **Time for Bringing Action.** Any action that Buyer brings against HME for breach of this Agreement or for any other claim that arises out of or relates to the Apparatus or its design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

15. **Applicable Law.** This Agreement between HME and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law. Either party may bring any action that arises out of or relates to this Agreement in any federal or state court in Kent County, Michigan that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

16. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return

receipt requested, postage prepaid. Such communications must be sent to the respective parties address as set forth on the first page of this Agreement. Either party may change such address by giving notice to the other party of such change.

17. **Amendment and Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

18. **Binding Effect; Benefits; Assignment.** All of the terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by and against the successors and authorized assigns of each other party. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement, this Agreement being for the exclusive benefit of the parties and their respective heirs, personal representatives, successors and authorized assigns. No party will assign any of its respective rights or obligations under this Agreement to any other person without the prior written consent of the other party.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by .pdf or any electronic signature complying with the federal Electronic Signatures in Global and National Commerce Act of 2000, Public Law 106-229, as amended (e.g., Adobe eSign or DocuSign) or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. The signatures of the parties transmitted electronically will be “electronic signatures” within the meaning of the Uniform Electronic Transaction Act (USA) and the Electronic Commerce Directive (EU) in all jurisdictions where the legislation has been adopted.

20. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21. **Entire Agreement.** This Agreement constitutes the entire agreement between Buyer and HME with respect to the subject matter of this Agreement and supersedes all earlier agreements and understandings, oral and written, between the parties; *provided, however*, that nothing in this Agreement shall terminate, amend or modify any previously executed confidentiality agreement(s) between Buyer and HME. The Specifications and contents of **Schedule A** shall be incorporated into, made a part of and governed by the terms of this Agreement. If there is a conflict between these Terms and Conditions and the Specifications or any information on **Schedule A**, these Terms and Conditions shall control, unless **Schedule A** specifically amends these Terms and Conditions by reference to Paragraphs to be amended.