

EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City") and Herc Rentals, Inc, a Delaware corporation, authorized to do business in the State of Arizona, ("Contractor") as of the ____ day of _____, 2024 ("Effective Date").

RECITALS

- A. City desires to purchase certain equipment from Contractor, as set forth in the attached **Exhibit A**, Scope of Work ("Scope");
- B. Contractor is not providing the City with any professional services other than providing equipment to meet the City's specifications, industry standards and the quality standards set forth in this Agreement, and
- C. City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

The parties hereby agree as follows:

- 1. **Schedule.** The Equipment will be built according to the City's specifications and delivered in timely and efficiently manner.
- 2. **Contractor's Work.**
 - 2.1 Standard. Contractor must provide the equipment in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of Equipment for projects that are equivalent in size, scope, quality, and other criteria as identified in this Agreement.
 - 2.2 Licensing. Contractor warrants that:
 - a. Contractor currently holds all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of Equipment ("Approvals"); and
 - b. Neither Contractor nor any Subcontractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments, or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration. The failure of the Contractor to notify City as required will constitute a material default under the Agreement.
 - 2.3 Compliance.
 - a. Equipment will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.
 - b. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

3. **Compensation for the Equipment.**

Compensation. Contractor's compensation for the equipment will not exceed **\$124,175.00** as specifically detailed in **Exhibit B** ("Compensation").

4. **Billings and Payment.**

4.1 Applications.

- a. Contractor will submit its invoice ("Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The City will process and remit payment within 30 days, unless the equipment does not meet the City's specifications or the City rejects the Payment Application for any other reason.

4.2 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the City will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

5. **Termination.**

5.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery. Contractor will not be compensated for Equipment unless it has been delivered to City and meets the City's specifications.

5.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Equipment furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provisions of Sec. 4.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater.

6. **Conflict.** Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or Contractor of any other party to this Agreement.

7. **Insurance.** For the duration of the term of this Agreement, Contractor shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with building and delivering the Equipment to the City's specifications. Such insurance shall cover Contractor, its agent(s), representative(s), employee(s) and any subcontractors.

7.1 Minimum Scope and Limit of Insurance. Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Equipment/location or the general aggregate limit shall be twice the required occurrence limit.

- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- c. Professional Liability. Contractor must maintain a Professional Liability insurance covering errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose acts, mistakes, errors and omissions Contractor is legally liability, with a liability insurance limit of \$1,000,000 for each claim and a \$2,000,000 annual aggregate limit.
- d. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.

7.2 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any SubContractor or Subcontractor or other person or firm employed by Contractor), whether sustained before or after delivery of the Equipment.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

7.3 Other Insurance Provisions. The insurance policies required by the Section above must contain, or be endorsed to contain the following insurance provisions:

- a. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL and automobile policies for any liability arising from or in connection with the performance of all tasks or work necessary to build and deliver the Equipment as specified by the City. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Contractor or on its behalf and for liability arising from automobiles owned, leased, hired or borrowed on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
- b. For any claims related to this Equipment, the **Contractor's insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

- c. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.
- 7.4 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless the Contractor has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.
- 7.5 **Waiver of Subrogation.** Contractor hereby agrees to waive its rights of subrogation which any insurer may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agent(s) and subcontractor(s).
- 7.6 **Verification of Coverage.** Within 15 days of the Effective Date of this Agreement, Contractor shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before work commences. Failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements prior to the City's agreement that work may commence shall not waive the Contractor's obligations to obtain and verify insurance coverage as otherwise provided in this Section. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein.
- Contractor's failure to obtain, submit or secure the City's approval of the required insurance policies, certificates or endorsements shall not be considered a Force Majeure or defense for any failure by the Contractor to comply with the terms and conditions of the Agreement, including any schedule for building or delivering the Equipment.
- 7.7 **Subcontractors.** Contractor shall require and shall verify that all subcontractors maintain insurance meeting all requirements of this Agreement.
- 7.8 **Special Risk or Circumstances.** The City reserves the right to modify these insurance requirements, including any limits of coverage, based on the nature of the risk, prior experience, insurer, coverage or other circumstances unique to the Contractor, the Equipment or the insurer.
8. **E-verify, Records and Audits.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrants their compliance and that of its subcontractors with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.
9. **No Boycott of Israel.** To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
10. **Uyghur Forced Labor Prevention Act (UFLPA).** Contractor certifies that it does not currently, and during the term of this Agreement, will not use:
- a. the forced labor of ethnic Uyghurs in the People's Republic of China;
 - b. any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and

- c. 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.

11. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

12. Notices.

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- a. The Notice is in writing; and
- b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day before 5:00 p.m. at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
- d. The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

12.2 Representatives.

- a. Contractor. Contractor's representative (the " Contractor's Representative") authorized to act on Contractor's behalf with respect to the Agreement, and his or her address for Notice delivery is:

Herc Rentals Inc.
3624 S. 7th Street
Phoenix, AZ 85040
c/o Tristan Niblett

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Craig Croner, Deputy Director, Fleet Management
6210 W. Myrtle Avenue, #111
Glendale, Arizona 85301

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by the City Manager and the City Attorney.

- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

13. Entire Agreement; Survival; Counterparts; Signatures.

- 13.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Equipment or this Agreement.
 - a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
 - b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
 - c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.
- 13.2 Interpretation.
 - a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
 - b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
 - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 13.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Equipment, or the earlier termination of this Agreement.
- 13.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.
- 13.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 13.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform with applicable law.
- 13.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

14. Term.

The term of this Agreement commences upon the effective date and continues until the equipment ordered is delivered or for a one (1) year period, whichever is shorter. There are no extensions or renewals of this Agreement.

15. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered according to the American Arbitration Association's Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
16. **Cooperative Use of Contract.** This agreement may be extended for use by other governmental agencies and political subdivisions of the State. Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: <http://www.mesaaz.gov/business/purchasing/save>
17. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.
- | | |
|-----------|---------------|
| Exhibit A | Scope of Work |
| Exhibit B | Compensation |

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager


ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Herc Rental, Inc.,
an Delaware corporation



By: Jason Oosterbeek
Its: Vice President

EXHIBIT A
Equipment Purchase Agreement

SCOPE OF WORK

Purchase of one (1) heavy-duty high range Telehandler Forklift for the Fire Department (per EQP Sale #56076279-000).

EXHIBIT B
Equipment Purchase Agreement

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Contractor will be paid within 30 days of submission of its invoices to the City at the agreed upon price.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for equipment provided to meet the City's specification must not exceed **\$124,175.00**.

DETAILED COMPENSATION

Compensation is being paid to purchase of one (1) heavy-duty high range Telehandler Forklift for the Fire Department (per EQP Sale #56076279-00), for a not to exceed amount of \$124,175.00 for the entire term of the Agreement. This includes a 15% contingency of \$16,200.00, which may only be utilized with the written approval of the City.



331 S PRICE RD
 CHANDLER, AZ 85224
 888-292-3423

Please make check payable to:
 HERC Exchange LLC
 Remit To:
 PO BOX 936257
 ATLANTA, GA 31193
 800-654-4740

Job Site:
 CITY OF GLENDALE-ARIZONA
 6322 W MYRTLE
 GLENDALE, AZ 853011700

 C#: 623-930-2600 J#: 623-930-2600

EQP SALE RESERVATION

** COPY **

Customer: 1189086
 CITY OF GLENDALE-ARIZONA
 6210 W MYRTLE
 SUITE 111
 GLENDALE, AZ 85301-1700

Invoice #... 56076279-000
 Invoice date 6/26/24 11:17
 Employee....
 Date in.....
 Job Loc.....
 Job No..... 1 - CITY OF GLENDA
 P.O. #..... TBA
 ORDERED BY: CRAIG CRONER
 Terms..... Due Upon Receipt
 Est# Days: 0 / 0

Qty	Equipment #	Price	Amount
1	569010228 CC: 460-1050 TELEHANDLER 9000LB 42-44FT LIFT ROPS	100000.00 HR OUT: 996.60	100000.00
	Make: JCB Model: 509-42 Serial #: JCB5CFGAL2993653		
	DELIVERY CHARGE		175.00
	Taxable Sub-total: 100000.00		Sub-total: 100175.00 Tax: 7800.00 Total: 107975.00

Herc Rentals Inc. does hereby transfer, set aside and assign all of its rights, (but not its obligations), to sell the equipment described in this quote, to HERC Exchange LLC pursuant to the HERC/HERC Exchange LLC Master Exchange Agreement. Notice is hereby given that all of HERC's rights, (but not its obligations), to sell the equipment described in this quote, have been assigned to HERC Exchange LLC pursuant to the HERC/HERC Exchange LLC Master Exchange Agreement.

Print Customer Name _____ Title _____
 Customer Signature _____ Date _____



Carefully read the terms and conditions on reverse side of this page