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MARC A. LEVINSON (STATE BAR NO. 57613)
malevinson@orrick.com
NORMAN C. HILE (STATE BAR NO. 57299)
nhile@orrick.com
JOHN W. KILLEEN (STATE BAR NO. 258395)
jkilleen@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814-4497
Telephone: (916) 447-9200
Facsimile: (916) 329-4900

Attorneys for Debtor
City of Stockton

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re: CITY OF STOCKTON, CALIFORNIA, Debtor.	Case No. 2012-32118 D.C. No. OHS-6 Chapter 9 **DECLARATION OF S. JEFF PIECHURA IN SUPPORT OF CITY OF STOCKTON'S MOTION FOR ORDER APPROVING ITS ASSUMPTION OF THE MASTER LEASE – PURCHASE AGREEMENT, AS AMENDED, WITH PIERCE MANUFACTURING, INC. RELATING TO FOUR FIRE PUMPER TRUCKS** Date: January 30, 2013 Time: 10:00 a.m. Dept: C, Courtroom 35 Judge: Hon. Christopher Klein

I, S. Jeff Piechura, declare as follows:

1. I have been the Fire Chief of the City of Stockton, California ("City") since October 15, 2012. I have been employed in fire service for 33 years, the last 24 as a Fire Chief. I am very familiar with the City's fleet of fire service vehicles.

2. I make this declaration in support of the City of Stockton's motion for an order approving the City's assumption of the Master Lease – Purchase Agreement, as Amended, between Pierce Manufacturing, Inc. ("Pierce") and the City. Such agreement amended the Master Lease – Purchase Agreement, dated as of February 10, 2012 ("Original Agreement"). The two agreements are referred to in this declaration collectively as the "Agreement." A true and correct copy of the Agreement is attached hereto as Exhibit A.

3. The Original Agreement was approved by the City Council on January 24, 2012. The Original Agreement provided for the acquisition of four, custom-built pumper trucks (the four collectively, the "Trucks"). The Trucks were to be manufactured by Pierce Manufacturing, Inc. ("Pierce") under a separate agreement with the City, according to the City's unique specifications and subject to financing for the purchase price of the Trucks. Production of the Trucks did not commence, and Pierce refused to commence manufacture of the Trucks absent financing for the acquisition which was not available as originally contemplated in light of the City's financial condition and its consequent chapter 9 filing. The City and Pierce then entered into negotiations that resulted in the Agreement, the financial terms of which are nearly identical to those of the Original Agreement, save for later delivery dates.

4. Of the City's fleet of 16 fire engines, eight are beyond their useful life, with each of the eight having over 20 years of front-line service. This poses a risk to the safety of the City, its citizens and to the firefighters who use the trucks. The fleet is so old and many of the trucks in such condition that often a mechanic follows the Fire Department in a separate vehicle when its trucks respond to fire alarms and other emergency calls. The City desperately needs the Trucks.

5. To begin to address this deficiency, the City's 2011-12 adopted budget for the Fleet Internal Service Fund included appropriations that provided $1,000,000 for the replacement of two fire pumpers. Due to the severe age of the existing apparatus, the City anticipated the

lease or purchase or lease of an additional two fire pumpers for another $1,000,000 during the 2012-13 fiscal year.

6. The City has annual Capital Funds designated for the maintenance of payments under the Agreement. These funds are derived through inter-fund assessments for vehicle replacement and maintenance that are budgeted annually, and are identified as Internal Service Funds.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Executed this 16th day of January, 2013, in Stockton, California.

By: _____
S. Jeff Piechura

OHSUSA:752889835.1

Exhibit A

AMENDMENT TO THE MASTER LEASE – PURCHASE AGREEMENT BETWEEN PIERCE MANUFACTURING, INC., AND CITY OF STOCKTON

This Amendment to the Master Lease – Purchase Agreement ("Amendment") is made and entered into as of the Effective Date (defined below), by and between Pierce Manufacturing, Inc. (hereinafter referred to as "Pierce"), and the City of Stockton (hereinafter referred to as "City"), with reference to the following facts and recitals.

RECITALS

1. City commenced a Chapter 9 case on June 28, 2012 ("Chapter 9 Case") under Title 11 of the United States Code ("Bankruptcy Code"). The Chapter 9 Case is presently pending in the United States Bankruptcy Court for the Eastern District of California ("Bankruptcy Court") under Case No. 2012-32118.

2. City and Pierce are parties to a *Master Lease – Purchase Agreement,* dated as of February 10, 2012 (including Lease Schedule No. 157862000, any additional schedules and exhibits, and as amended or supplemented from time to time, the "Lease"). Pierce is the Lessor under the Lease, as the assignee of PNC Bank, doing business as Oshkosh Capital ("Capital"). Unless otherwise defined, capitalized terms shall have the meaning set forth in the Lease. City and Pierce are also parties to a *Purchase Contract,* dated as of February 10, 2012 (including any schedules and exhibits and, as amended or supplemented from time to time, the "Agreement").

3. Under the Agreement, Pierce agreed to furnish four (4) new Pierce 1500 GPM Quantum fire pumper trucks ("Equipment") to City subject to financing from Capital.

4. Under the Lease, Capital agreed to finance the Agreement upon the satisfaction of certain conditions specified in the Lease.

5. City has requested that Pierce complete the production and delivery of the Equipment for lease by Pierce under the terms and conditions of, and in exchange for the Rent Payments specified in, the Lease.

6. Pierce is willing to consent to the assumption of the Lease by City subject to the terms and conditions of this Amendment.

NOW THEREFORE, for and in consideration of the mutual promises herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this Amendment, each intending to be legally bound, hereby agree as follows:

AGREEMENT

1. Pierce consents to the assumption by City of the Lease, as amended by this Amendment, under Section 365(b) of the Bankruptcy Code. The Lease shall be deemed assumed by City as of the date of entry (the "Effective Date") of the order of the Bankruptcy Court approving the City's motion for authority to assume the Lease ("Approval Order"). City will take the necessary and appropriate steps to obtain the approval by the Bankruptcy Court of the assumption of the Lease, as amended by this Amendment.

2. Subject to the occurrence of the Effective Date, the delivery date for the Equipment is estimated to occur on or about March 15, 2013. In the event the Effective Date does not occur, for any reason, on or before February 1, 2013, unless extended by mutual agreement of City and Pierce, this Amendment shall be deemed null and void and the Lease and the Agreement shall be deemed terminated by mutual agreement of the parties.

3. Schedule A-1 to the Lease shall be replaced and superseded by the revised Schedule A-1 attached as **Exhibit 1** to this Amendment ("Revised Schedule"). The Rent Payments and Purchase Price specified in the Lease shall be deemed revised pursuant to the Revised Schedule. City agrees to pay the Rent Payments set forth in the Revised Schedule in the amounts and at the times set forth in the Revised Schedule. The first Rent Payment due under the Lease shall be paid by City within three (3) business days following the Effective Date. The Lease Term under the Lease shall be deemed to commence on the Effective Date.

City acknowledges and agrees that the delivery date and the acquisition cost for the Equipment as set forth in the Agreement shall be deemed modified to conform to this Amendment and the Revised Schedule.

4. The Approval Order shall provide that the automatic stay under Section 362(a) of the Bankruptcy Code shall be modified to permit Pierce to (i) file, record, perfect and otherwise evidence its security interest in the Equipment pursuant to Section 8 of the Lease, and (ii) exercise its remedies upon the occurrence of an Event of Default under the Lease pursuant to Section 20 of the Lease. City shall request that the Approval Order contain a waiver of the automatic 14-day stay under Bankruptcy Rule 4001(a)(3).

5. City hereby represents and warrants that it has full power, authority and legal right to execute and deliver this Amendment and to perform its obligations hereunder, and all such actions have been duly authorized by appropriate findings and actions of City's governing authority. Except as amended by this Amendment, the Lease remains unchanged and in full force and effect.

6. Miscellaneous:

a) Each party to this Amendment and each person executing this document on behalf of each party to this Amendment warrants and represents that he or she has the power and authority to execute and deliver this Amendment.

b) The parties acknowledge that they are entering into this Amendment voluntarily and without reliance upon any representation of law or fact made by any party.

c) The parties warrant and represent that they have read this Amendment and that they have received independent advice from legal counsel of their own choosing with respect to the advisability of entering into this Amendment.

d) This Amendment is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Amendment may only be amended by an agreement in writing signed by the parties.

e) Each party has cooperated in the drafting and preparation of this Amendment. In any construction to be made of this Amendment, it shall not be construed against either party.

f) The parties acknowledge and agree that this Amendment embodies a settlement which is not in any respect, nor for any purpose, to be deemed or construed to be an admission or concession of any liability whatsoever on the part of any of the parties.

g) In the event of any litigation relating to a breach of this Amendment, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses and costs.

h) This Amendment may be executed in counterparts and copies may be used instead of originals. The executed counterparts shall be construed as and constitute one document.

i) The Bankruptcy Court shall retain jurisdiction to issue any order necessary or appropriate for the interpretation, implementation or enforcement of this Amendment.

IN WITNESS WHEREOF, the parties have caused the signatures of their duly authorized officers or responsible individuals to be hereunder affixed.

ACCEPTED BY:

Pierce Manufacturing, Inc.	City of Stockton
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

01/16/13 3:47 PM

EXHIBIT 1

Revised Schedule A-1 to Lease

EXHIBIT 1
Revised Schedule A-1 to Lease

1. EQUIPMENT LOCATION & DESCRIPTION

City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

San Joaquin County

2013 Pierce Quantum 1500 GPM Pumper VIN#
2013 Pierce Quantum 1500 GPM Pumper VIN#
2013 Pierce Quantum 1500 GPM Pumper VIN#
2013 Pierce Quantum 1500 GPM Pumper VIN#

Estimated delivery date: March 15, 2013

2. LEASE PAYMENT SCHEDULE:

Amount Financed:

i.	Equipment Purchase Price	$1,728,779.40
	Sales Tax	$ 142,624.30
ii.	Purchase Price Deduction	$ 0.00
	Prepay Discounts	$ 0.00
	Trade In	$ 0.00
iii.	Total Amount Financed (Purchase Price minus Purchase Price Deductions)	$1,871,403.70

Rent Payment Number	Rent Payment Date	Rent Payment Amount	Interest Portion	Principal Portion	Termination Value
1	February 4, 2013	$ 213,300.29	$ -	$ 213,300.29	$ 1,691,265.48
2	September 15, 2013	$ 213,300.29	$ 33,729.91	$ 179,570.38	$ 1,508,103.69
3	September 15, 2014	$ 213,300.29	$ 48,791.59	$ 164,508.70	$ 1,340,304.82
4	September 15, 2015	$ 213,300.29	$ 43,362.80	$ 169,937.49	$ 1,166,968.58
5	September 15, 2016	$ 213,300.29	$ 37,754.87	$ 175,545.42	$ 987,912.25
6	September 15, 2017	$ 213,300.29	$ 31,961.87	$ 181,338.42	$ 802,947.06
7	September 15, 2018	$ 213,300.29	$ 25,977.70	$ 187,322.59	$ 611,878.02
8	September 15, 2019	$ 213,300.29	$ 19,796.05	$ 193,504.24	$ 414,503.69
9	September 15, 2020	$ 213,300.29	$ 13,410.41	$ 199,889.88	$ 210,616.02
10	September 15, 2021	$ 213,300.29	$ 6,814.00	$ 206,486.29	$ (0.00)

C-12-2848 MP

Master Lease-Purchase Agreement
Between
CITY OF STOCKTON AND OSHKOSH CAPITAL

DOCUMENT INDEX

- ❑ Master Lease-Purchase Agreement – Sign and provide title on the last page
- ❑ Lease Schedule with Schedule A-1 – Sign and title
- ❑ Vehicle Schedule Addendum –Sign and title
- ❑ Incumbency Certificate and Resolution – List your authorized signor(s) and title(s); have secretary or appropriate trustee attest to the information and signature(s) provided by signing and printing his/her name, title and date. **The person who validates the signatures should not sign the lease documents.** The resolution must reflect the title(s) of the individual(s) who have authorization to sign the documents.
- ❑ Opinion of Counsel Letter – Enclosed is a template. Please ask your attorney to prepare on his/her letterhead, and include all of the items in the template.
- ❑ Insurance Request Form – Fill in your insurer's information and sign. Please contact your insurer, prior to delivery, to obtain a certificate of insurance. Please enclose the certificate with the signed documentation or have the insurer fax the certificate directly to me.
- ❑ Three Party Agreement – Sign and title.
- ❑ Delivery & Acceptance Certificate – **At point of delivery, fill out this form and fax it to me. Please return the original via US Postal Service.**
- ❑ IRS FORM 8038-G – Sign, date, and title
- ❑ Minutes of Governing Body (approving the purchase & finance of equipment) – Please return a copy with the documents.
- ❑ ***Sales Contract or Purchase Order - please provide a copy of the Sales Contract enter into with Pierce Manufacturing or a copy of the Purchase Order issued to Pierce Manufacturing Inc.***

155 E. Broad St., B4-B230-05-7 ✦ Columbus, Ohio 43215
phone 800-820-9041 ✦ fax 800-678-0602

DUPLICATE

E05

MASTER LEASE – PURCHASE AGREEMENT

February 10, 2012

This Master Lease-Purchase Agreement together with all addenda, riders and attachments hereto, as the same may from time to time be amended, modified or supplemented ("Master Lease") is made and entered by and between Oshkosh Capital ("Lessor") and the Lessee identified below ("Lessee").

LESSEE: City of Stockton

1. **LEASE OF EQUIPMENT**. Subject to the terms and conditions of this Master Lease, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, all Equipment described in each Schedule signed from time to time by Lessee and Lessor.

2. **CERTAIN DEFINITIONS.** All terms defined in the Lease are equally applicable to both the singular and plural form of such terms. (a) "Schedule" means each Lease Schedule signed and delivered by Lessee and Lessor, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented. Lessee and Lessor agree that each Schedule (except as expressly provided in said Schedule) incorporates by reference all of the terms and conditions of the Master Lease. (b) "Lease" means each Schedule and this Master Lease as incorporated into said Schedule. (c) "Equipment" means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto. (d) "Lien" means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person.

3. **LEASE TERM.** The term of the lease of the Equipment described in each Lease ("Lease Term") commences on the first date any of such Equipment is accepted by Lessee pursuant to Section 5 hereof and, unless earlier terminated as expressly provided in the Lease, continues until Lessee's payment and performance in full of all of Lessee's obligations under the Lease.

4. **RENT PAYMENTS**.

4.1 For each Lease, Lessee agrees to pay to Lessor the rent payments in the amounts and at the times as set forth in the Schedule A-1 attached to the Schedule ("Rent Payments"). A portion of each Rent Payment is paid as and represents the payment of interest as set forth in the Schedule A-1. Rent Payments will be payable for the Lease Term in U.S. dollars, without notice or demand at the office of Lessor (or such other place as Lessor may designate from time to time in writing).

4.2 If Lessor receives any payment from Lessee after the due date, Lessee shall pay Lessor on demand as a late charge five per cent (5%) of such overdue amount, limited, however, to the maximum amount allowed by law.

4.3 EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6 HEREOF OR IN ANY WRITTEN MODIFICATION TO THE LEASE SIGNED BY LESSOR, THE OBLIGATION TO PAY RENT PAYMENTS UNDER EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

5. **DELIVERY; ACCEPTANCE; FUNDING CONDITIONS**.

DUPLICATE

5.1 Lessee shall arrange for the transportation, delivery and installation of all Equipment to the location specified in the Schedule ("Location") by Equipment suppliers ("Suppliers") selected by Lessee. Lessee shall pay all costs related thereto unless Lessor otherwise agrees to pay such costs as stated in the Schedule.

5.2 Lessee shall accept Equipment as soon as it has been delivered and is operational. Lessee shall evidence its acceptance of any Equipment by signing and delivering to Lessor the applicable Schedule. If Lessee signs and delivers a Schedule and if all Funding Conditions have been satisfied in full, then Lessor will pay or cause to be paid the costs of such Equipment as stated in the Schedule ("Purchase Price") to the applicable Supplier.

5.3 Lessor shall have no obligation to pay any Purchase Price unless all reasonable conditions established by Lessor ("Funding Conditions") have been satisfied, including, without limitation, the following: (a) Lessee has signed and delivered the Schedule and its Schedule A-1; (b) no Event of Default shall have occurred and be continuing; (c) no material adverse change shall have occurred in the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder (collectively, the "Code"); (d) no material adverse change shall have occurred in the financial condition of Lessee or any Supplier; (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (except Lessor's Liens); (f) all representations of Lessee in the Lease remain true, accurate and complete; and (g) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage required by the Lease, (2) an opinion of Lessee's counsel; (3) reasonably detailed invoices for the Equipment; (4) Uniform Commercial Code (UCC) financing statements; (5) copies of resolutions by Lessee's governing body, duly authorizing the Lease and incumbency certificates for the person(s) who will sign the Lease; (6) such documents and certificates relating to the tax-exempt interest payable under the Lease (including, without limitation, IRS Form 8038G or 8038GC) as Lessor may request; and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

6. **TERMINATION FOR GOVERNMENTAL NON-APPROPRIATIONS.**

6.1 For each Lease, Lessee represents and warrants: that it has appropriated and budgeted the necessary funds to make all Rent Payments required pursuant to such Lease for the remainder of the fiscal year in which the Lease Term commences; and that it intends to make Rent Payments for the full Lease Term as scheduled on the applicable Schedule A-1 so long as funds are appropriated in each fiscal year by its governing body. Lessee reasonably believes that moneys in an amount sufficient to make all Rent Payments can and will lawfully be appropriated and made available therefor. All Rent Payments shall be payable out of funds legally available therefore. Lessor agrees that the Leases will not be general obligations of Lessee and that the Leases shall not constitute pledges of either the full faith and credit of Lessee or the taxing power of Lessee.

6.2 If Lessee's governing body fails to appropriate sufficient funds in any fiscal year for Rent Payments or other payments due under a Lease and if other funds are not available for such payments, then a "Non-Appropriation Event" shall be deemed to have occurred. If a Non-Appropriation Event occurs, then: (a) Lessee shall give Lessor immediate notice of such Non-Appropriation Event and provide written evidence of such failure by Lessee's governing body; (b) on the Return Date, Lessee shall return to Lessor all, but not less than all, of the Equipment covered by the affected Lease, at Lessee's sole expense, in accordance with Section 21 hereof; and (c) the affected Lease shall terminate on the Return Date without penalty or expense to Lessee, provided, that Lessee shall pay all Rent Payments and other amounts payable under the affected Lease for which funds shall have been appropriated or are otherwise available, provided further, that Lessee shall pay month-to-month rent at the rate set forth in the affected Lease for each month or part thereof that Lessee fails to return the Equipment under this Section 6.2. "Return Date" means the last day of the fiscal year for which appropriations were made for the Rent Payments due under a Lease.

7. NO WARRANTY BY LESSOR. **The Equipment is sold "AS IS". LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT. LESSOR DOES NOT REPRESENT THE MANUFACTURER, OWNER, OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR**

DUPLICATE

DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT OR THIS MASTER LEASE – LEASE PURCHASE AGREEMENT. NEITHER THE MANUFACTURER, THE DEALER, NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE DEALER OR MANUFACTURER, IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term, Lessor hereby assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor in accordance with Lessee's specifications from Suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or Supplier or any representative of said parties shall not be binding upon Lessor.

8. **TITLE; SECURITY INTEREST.**

8.1 Upon Lessee's acceptance of any Equipment under its Lease, title to the Equipment shall vest in Lessee, subject to Lessor's security interest therein and all of Lessor's other rights under such Lease including, without limitation, Sections 6, 20 and 21 hereof.

8.2 As collateral security for the Secured Obligations, Lessee hereby grants to Lessor a first priority security interest in any and all of the Equipment (now existing or hereafter acquired) and any and all proceeds thereof. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code (UCC) financing statements and any amendments thereto.

8.3 "Secured Obligations" means Lessee's obligations to pay all Rent Payments and all other amounts due and payable under all present and future Leases and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due, or existing or hereafter arising) of Lessee under all present and future Leases.

9. **PERSONAL PROPERTY.** All Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate or any building thereon.

10. **MAINTENANCE AND OPERATION.** Lessee agrees it shall, at its sole expense: (a) repair and maintain all Equipment in good condition and working order, in accordance with manufacturer's instructions, and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts or devices shall automatically become part of the Equipment; and (b) use and operate all Equipment in a careful manner in the normal course of its operations and only for the purposes for which it was designed in accordance with the manufacturer's warranty requirements, and comply with all laws and regulations relating to the Equipment. If any Equipment is customarily covered by a maintenance agreement, Lessee will furnish Lessor with a maintenance agreement by a party reasonably satisfactory to Lessor. No maintenance or other service for any Equipment will be provided by Lessor. Lessee will not make any alterations, additions or improvements ("Improvements") to any Equipment without Lessor's prior written consent unless the Improvements may be readily removed without damage to the operation, value or utility of such Equipment, but any such Improvements not removed prior to the termination of the applicable Lease shall automatically become part of the Equipment.

11. **LOCATION; INSPECTION.** Equipment will not be removed from, or if Equipment is rolling stock its permanent base will not be changed from, the Location without Lessor's prior written consent which will not be unreasonably withheld. Upon reasonable notice to Lessee, Lessor may enter the Location or elsewhere during normal business hours to inspect the Equipment.

12. **LIENS, SUBLEASES AND TAXES.**

DUPLICATE

12.1 Lessee shall keep all Equipment free and clear of all Liens except those Liens created under its Lease. Lessee shall not sublet or lend any Equipment or permit it to be used by anyone other than Lessee or Lessee's employees.

12.2 Lessee shall pay when due all Taxes which may now or hereafter be imposed upon any Equipment or its ownership, leasing, rental, sale, purchase, possession or use, upon any Lease or upon any Rent Payments or any other payments due under any Lease. If Lessee fails to pay such Taxes when due, Lessor shall have the right, but not the obligation, to pay such Taxes. If Lessor pays any such Taxes, then Lessee shall, upon demand, immediately reimburse Lessor therefor. "Taxes" means present and future taxes, levies, duties, assessments or other governmental charges that are not based on the net income of Lessor, whether they are assessed to or payable by Lessee or Lessor, including, without limitation (a) sales, use, excise, licensing, registration, titling, gross receipts, stamp and personal property taxes, and (b) interest, penalties or fines on any of the foregoing.

13. **RISK OF LOSS.**

13.1 Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part from any reason whatsoever ("Casualty Loss"). No Casualty Loss to any Equipment shall relieve Lessee from the obligation to make any Rent Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 13.

13.2 If a Casualty Loss occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

13.3 If Lessor determines that any item of Equipment has suffered a Casualty Loss beyond repair ("Lost Equipment"), then Lessee shall either: (a) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens (except Lessor's Liens) and deliver to Lessor a bill of sale covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease; or (b) on the next scheduled Rent Payment date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rent Payment due on such date plus (ii) an amount equal to the applicable Termination Value set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee with the pro rata amount of the Rent Payment and Termination Value to be paid by Lessee with respect to the Lost Equipment.

13.4 Lessee shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorney's fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

14. **INSURANCE.**

14.1 (a) Lessee at its sole expense shall at all times keep all Equipment insured against all risks of loss or damage from every cause whatsoever for an amount not less than the Termination Value of the Equipment. Proceeds of any such insurance covering damage or loss of any Equipment shall be payable to Lessor as loss payee. (b) The Total Amount Financed as set forth on the Schedule A-1 does not include the payment of any premium for any liability insurance coverage for bodily injury and/or property damage caused to others and no such insurance will be purchased by Lessor. (c) Lessee at its sole expense shall at all times carry public liability and property damage insurance in amounts reasonably satisfactory to Lessor protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to any Equipment. Proceeds of any such public liability or property insurance shall be payable first to Lessor as additional insured to the extent of its liability, and then to Lessee.

14.2 All insurers shall be reasonably satisfactory to Lessor. Lessee shall promptly deliver to Lessor satisfactory evidence of required insurance coverage and all renewals and replacements thereof.

Each insurance policy will require that the insurer give Lessor at least 30 days prior written notice of any cancellation of such policy and will require that Lessor's interests remain insured regardless of any act, error, misrepresentation, omission or neglect of Lessee. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

15. **PURCHASE OPTION.** Upon thirty (30) days prior written notice by Lessee to Lessor, and so long as there is no Event of Default then existing, Lessee shall have the option to purchase all, but not less than all, of the Equipment covered by a Lease on any Rent Payment due date by paying to Lessor all Rent Payments then due (including accrued interest, if any) plus the Termination Value amount set forth on the Payment Schedule to the applicable Lease for such date. Upon satisfaction by Lessee of such purchase conditions, Lessor shall release its Lien on such Equipment and Lessee shall retain its title to such Equipment "AS-IS, WHERE-IS," without representation or warranty by Lessor, express or implied, except for a representation that such Equipment is free and clear of any Liens created by Lessor.

16. **LESSEE'S REPRESENTATIONS AND WARRANTIES.** With respect to each Lease and its Equipment, Lessee hereby represents and warrants to Lessor that:

(a) Lessee has full power, authority and legal right to execute and deliver the Lease and to perform its obligations under the Lease, and all such actions have been duly authorized by appropriate findings and actions of Lessee's governing body;

(b) the Lease has been duly executed and delivered by Lessee and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Lease is authorized under, and the authorization, execution and delivery of the Lease complies with, all applicable federal, state and local laws and regulations (including, but not limited to, all open meeting, public bidding and property acquisition laws) and all applicable judgments and court orders;

(d) the execution, delivery and performance by Lessee of its obligations under the Lease will not result in a breach or violation of, nor constitute a default under, any agreement, lease or other instrument to which Lessee is a party or by which Lessee's properties may be bound or affected;

(e) there is no pending, or to the best of Lessee's knowledge threatened, litigation of any nature which may have a material adverse effect on Lessee's ability to perform its obligations under the Lease; and

(f) Lessee is a state, or a political subdivision thereof, as referred to in Section 103 of the Code, and Lessee's obligation under the Lease constitutes an enforceable obligation issued on behalf of a state or a political subdivision thereof.

17. **TAX COVENANTS.** Lessee hereby covenants and agrees that:

(a) Lessee shall comply with all of the requirements of Section 149(a) and Section 149(e) of the Code, as the same may be amended from time to time, and such compliance shall include, but not be limited to, keeping a complete and accurate record of any assignments of any Lease and executing and filing Internal Revenue Form 8038G or 8038GC, as the case may be, and any other information statements reasonably requested by Lessor;

(b) Lessee shall not do (or cause to be done) any act which will cause, or by omission of any act allow, any Lease to be an "arbitrage bond" within the meaning of Section 148(a) of the Code or any Lease to be a "private activity bond" within the meaning of Section 141(a) of the Code; and

(c) Lessee shall not do (or cause to be done) any act which will cause, or by omission of any act allow, the interest portion of any Rent Payments to be or become includable in gross income for Federal income taxation purposes under the Code.

(d) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and approved by Lessee, which approval Lessee shall not unreasonably withhold, that Lessor may not exclude the interest component of

DUPLICATE

any Rent Payment under a Tax-Exempt Lease from federal gross income because Lessee breached a covenant contained herein, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rent Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rent Payments under such Tax-Exempt Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after-tax yield on the transaction evidenced by such Tax-Exempt Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event with respect to a Tax-Exempt Lease, it shall pay additional rent to Lessor on each succeeding Rent Payment due date in such amount as will maintain such after-tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error). Notwithstanding anything in a Tax-Exempt Lease to the contrary, any payment that Lessee is required to make pursuant to this subsection (b) shall be made only from Legally Available Funds.

18. **ASSIGNMENT.**

18.1 Lessee shall not assign, transfer, pledge, hypothecate, nor grant any Lien on, nor otherwise dispose of, any Lease or any Equipment or any interest in any Lease or Equipment.

18.2 Lessor may assign its rights, title and interest in and to any Lease or any Equipment, and/or may grant or assign a security interest in any Lease and its Equipment, in whole or in part, to any party at any time. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease. **LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR.** Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease or its Equipment shall be enforceable against Lessee only after Lessee receives a written notice of assignment which discloses the name and address of each such Assignee. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

18.3 Each Assignee of a Lease hereby agrees that: (a) the term Secured Obligations as used in Section 8.3 hereof is hereby amended to include and apply to all obligations of Lessee under the Assigned Leases and to exclude the obligations of Lessee under any Non-Assigned Leases; (b) said Assignee shall have no Lien on, nor any claim to, nor any interest of any kind in, any Non-Assigned Leases; and (c) Assignee shall exercise its rights, benefits and remedies as the assignee of Lessor (including, without limitation, the remedies under Section 20 of the Master Lease) solely with respect to the Assigned Leases. "Assigned Leases" means only those Leases which have been assigned to an Assignee pursuant to a written agreement; and "Non-Assigned Leases" means all Leases excluding the Assigned Leases.

18.4 Subject to the foregoing, each Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

19. **EVENTS OF DEFAULT.** For each Lease, "Event of Default" means the occurrence of any one or more of the following events as they may relate to such Lease: (a) Lessee fails to make any Rent Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (b) Lessee fails to perform or observe any of its obligations under Sections 12.1, 14 or 18.1 hereof; (c) Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it under the Lease and such failure is not cured within thirty (30) days after receipt of written notice thereof by Lessor; (d) any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; (e) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its

DUPLICATE

assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency or similar law, or a petition in a proceeding under any federal or state bankruptcy, insolvency or similar law is filed against Lessee and is not dismissed within sixty (60) days thereafter; or (f) Lessee shall be in default under any other Lease or under any other financing agreement executed at any time with Lessor.

20. **REMEDIES**. If any Event of Default occurs, then Lessor may, at its option, exercise any one or more of the following remedies:

(a) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all amounts then currently due under all Leases and all remaining Rent Payments due under all Leases during the fiscal year in effect when the default occurs together with interest on such amounts at the highest lawful rate from the date of Lessor's demand for such payment.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 21 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand or notice, without any court order or other process of law and without liability for any damage occasioned by such repossession;

(c) Lessor may sell, lease or otherwise dispose of any Equipment, in whole or in part, in one or more public or private transactions, and if Lessor so disposes of any Equipment, then Lessor shall retain the entire proceeds of such disposition free of any claims of Lessee, provided, that the net proceeds of any such disposition shall be applied to amounts payable by Lessee under clause (a) above of this Section only to the extent that such net proceeds exceed the applicable Termination Value set forth in the applicable Schedule A-1;

(d) Lessor may terminate, cancel or rescind any Lease as to any and all Equipment;

(e) Lessor may exercise any other right, remedy or privilege which may be available to Lessor under applicable law or, by appropriate court action at law or in equity, Lessor may enforce any of Lessee's obligations under any Lease; and/or

(f) Lessor may require Lessee to pay (and Lessee agrees that it shall pay) all out-of-pocket costs and expenses incurred by Lessor as a result (directly or indirectly) of the Event of Default and/or of Lessor's actions under this section, including, without limitation, any attorney fees and expenses and any costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of any Equipment.

None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor's exercise of one or more remedies shall not preclude its exercise of any other remedy. No delay or failure on the part of Lessor to exercise any remedy under any Lease shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise of any remedy preclude any other exercise thereof or the exercise of any other remedy.

21. **RETURN OF EQUIPMENT**. If Lessor is entitled under the provisions of any Lease, including any termination thereof pursuant to Sections 6 or 20 of this Master Lease, to obtain possession of any Equipment or if Lessee is obligated at any time to return any Equipment, then (a) title to the Equipment shall vest in Lessor immediately upon Lessors notice thereof to Lessee, and (b) Lessee shall, at its sole expense and risk, immediately return the Equipment to Golden State Fire Apparatus located at 1237 Doker Drive, Modesto, CA 95351 otherwise Lessor at its sole expense and risk shall take possession of all equipment.. Such Equipment shall be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), shall be in good operating order and maintenance as required by the applicable Lease, shall be free and clear of any Liens (except Lessor's Lien) and shall comply with all applicable laws and regulations. Until Equipment is returned as required above, all terms of the applicable Lease shall remain in full force and effect including, without limitation, obligations to pay Rent Payments and to insure the Equipment. Lessee agrees to execute and deliver to Lessor all documents reasonably requested by Lessor to evidence the transfer of legal and beneficial title to such Equipment to Lessor and to evidence the termination of Lessee's interest in such Equipment.

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22. **LAW GOVERNING. Each Lease shall be governed by the laws of the state of the lessee (The "State").**

23. **NOTICES.** All notices to be given under any Lease shall be made in writing and either personally delivered or mailed by certified mail to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notices shall be deemed to have been received five (5) days subsequent to mailing if sent by regular or certified mail, or on the next business day if sent by overnight courier, or on the day of delivery if delivered personally.

24. **FINANCIAL INFORMATION; INDEMNITY; POWER OF ATTORNEY.** Within thirty (30) days of their completion in each fiscal year of Lessee during any Lease Term, Lessee will deliver to Lessor upon Lessor's request the publicly available annual financial information of Lessee. To the extent permitted by law, Lessee shall indemnify, hold harmless and, if Lessor requests, defend Lessor and its shareholders, affiliates, employees, dealers and agents against all Claims directly or indirectly arising out of or connected with (a) the manufacture, installation, use, lease, possession or delivery of the Equipment, (b) any defects in the Equipment, any wrongful act or omission of Lessee, or its employees and agents, or (c) any claims of alleged breach by Lessee of this Master Lease or any related document. "Claims" means all losses, liabilities, damages, penalties, expenses (including attorney's fees and costs), claims, actions and suits, whether in contract, tort or otherwise. Lessee hereby appoints Lessor its true and lawful attorney-in-fact (with full power of substitution) to prepare any instrument, certificate of title or financing statement covering the Equipment or otherwise protecting Lessor's interest in the Equipment, to sign Lessee's name with the same force and effect as if signed by Lessee, and to file same at the proper location(s); and make claims for, receive payment of, and execute and endorse all documents, checks or drafts for loss, theft, damage or destruction to the Equipment under any insurance.

25. **SECTION HEADINGS.** All section headings contained herein or in any Schedule are for convenience of reference only and do not define or limit the scope of any provision of any Lease.

26. **EXECUTION IN COUNTERPARTS.** Each Schedule to this Master Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which shall be deemed one instrument. Only one counterpart of each Schedule shall be marked "Lessor's Original" and all other counterparts shall be deemed duplicates. An assignment of or security interest in any Schedule may be created through transfer and possession only of the counterpart marked "Lessor's Original."

27. **ENTIRE AGREEMENT; WRITTEN AMENDMENTS.** Each Lease, together with the exhibits attached thereto and made a part hereof and other attachments thereto, and other documents or instruments executed by Lessee and Lessor in connection therewith, constitute the entire agreement between the parties with respect to the lease of the Equipment covered thereby, and such Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of any Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

City of Stockton
("Lessee")

By: _____

Title: City Manager

425 N. El Dorado Street
Stockton, CA 95202

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title Operation Manager

155 East Broad Street, B4-B230-05-7
Columbus, OH 43215

APPROVED AS TO FORM

CITY ATTORNEY

By _____

Deputy City Attorney

ATTEST:
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

By _____

DUPLICATE

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LEASE SCHEDULE NO. 157862000

February 10, 2012

This Lease Schedule (this "Schedule") is attached and made a part of the Master Lease-Purchase Agreement referenced below, together with all exhibits, schedules, addenda, and other attachments thereto, executed by Lessee and Lessor (the "Lease"). Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference. To the extent that there is any conflict between the terms of the Lease and this Schedule, the terms of this Schedule shall control.

Master Lease-Purchase Agreement dated February 10, 2012

1. **EQUIPMENT DESCRIPTION.** As used in the Lease, "Equipment" means all of the property described in Schedule A-1 attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.

2. **RENTAL PAYMENTS; LEASE TERM.** The Rental Payments to be paid by the Lessee to Lessor, the commencement date thereof and the lease term of this Lease Schedule are set forth on the Schedule A-1 attached to this Lease Schedule.

3. **ESSENTIAL USE; CURRENT INTENT OF LESSEE.** Lessee represents that the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens and the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and (if applicable) to make Rent Payments if funds are appropriated in each fiscal year by its governing body.

4. **ACCEPTANCE OF EQUIPMENT.** AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (A) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (B) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (C) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS"; AND (D) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE.

5. **BANK QUALIFIED.** LESSEE CERTIFIES THAT IT HAS DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION IN ACCORDANCE WITH SECTION 265(b)(3) OF THE CODE, THAT IT HAS NOT DESIGNATED MORE THAN $10,000,000 OF ITS OBLIGATIONS AS QUALIFIED TAX-EXEMPT OBLIGATIONS IN ACCORDANCE WITH SUCH SECTION FOR THE CURRENT CALENDAR YEAR AND THAT IT REASONABLY ANTICIPATES THAT THE TOTAL AMOUNT OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY LESSEE DURING THE CURRENT CALENDAR YEAR WILL NOT EXCEED $10,000,000.

6. **RE-AFFIRMATION OF THE MASTER LEASE-PURCHASE AGREEMENT.** Lessee hereby re-affirms all of its representations, warranties and obligations under the Master Lease Purchase Agreement (including, without limitation, its obligation to pay all Rental Payments, its disclaimers in Section 7 thereof and its representations in Section 6.1 and 16 thereof).

City of Stockton
("Lessee")

By: _____

Title: City Manager

APPROVED AS TO FORM

CITY ATTORNEY

BY _____
Deputy City Attorney

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title: Operations Manager

ATTEST:
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

By _____

STOCKTON FOUNDED JUNE 1849 INCORPORATED JULY 1850

DUPLICATE

Schedule A-1

1. **EQUIPMENT LOCATION & DESCRIPTION:**

City of Stockton

425 N. El Dorado Street

Stockton, CA 95202

San Joaquin County

2012 Pierce Quantum 1500 GPM Pumper	VIN#
2012 Pierce Quantum 1500 GPM Pumper	VIN#
2012 Pierce Quantum 1500 GPM Pumper	VIN#
2012 Pierce Quantum 1500 GPM Pumper	VIN#

2. **LEASE PAYMENT SCHEDULE.**

(a)	Accrual Date:	February 10, 2012
(b)	Amount Financed:	
i.	Equipment Purchase Price	$1,732,248.60
	Sales Tax	$133,000.48
ii.	Purchase Price Deduction	$0.00
	Prepay Discounts	$69,742.64
	Trade In	$0.00
iii.	Total Amount Financed (Cash Sale Price minus Purchase Price Deductions)	$1,795,506.44

DUPLICATE

(c) Payment Schedule:

Accrual Date: February 10, 2012

Rent Payment Number	Rent Payment Date	Rent Payment Amount	Interest Portion	Principal Portion	Termination Value
1	2/10/2013	213,723.36	59,251.71	154,471.65	1,673,855.49
2	2/10/2014	213,723.36	54,154.15	159,569.21	1,511,094.89
3	2/10/2015	213,723.36	48,888.36	164,835.00	1,342,963.19
4	2/10/2016	213,723.36	43,448.81	170,274.55	1,169,283.15
5	2/10/2017	213,723.36	37,829.75	175,893.61	989,871.67
6	2/10/2018	213,723.36	32,025.26	181,698.10	804,539.61
7	2/10/2019	213,723.36	26,029.22	187,694.14	613,091.58
8	2/10/2020	213,723.36	19,835.32	193,888.04	415,325.78
9	2/10/2021	213,723.36	13,437.01	200,286.35	211,033.71
10	2/10/2022	213,723.36	6,827.57	206,895.79	0.00

City of Stockton
("Lessee")

By: _____

Title: City Manager

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title: Operations Manager

APPROVED AS TO FORM

CITY ATTORNEY

BY _____
Deputy City Attorney

ATTEST:
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

By _____

STOCKTON FOUNDED JUNE 1849 INCORPORATED JULY 1850

DUPLICATE

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VEHICLE SCHEDULE ADDENDUM

February 10, 2012

Lease Schedule No. 157862000 Dated February 10, 2012

Lessee: City of Stockton

Reference is made to the above Lease Schedule ("Schedule") to the Master Lease-Purchase Agreement identified in the Lease Schedule ("Master Lease") by and between Oshkosh Capital ("Lessor") and the above Lessee ("Lessee"). This Addendum amends and modifies the terms and conditions of the Schedule and is hereby made a part of the Schedule. Unless otherwise defined herein, capitalized terms defined in the Master Lease shall have the same meaning when used herein.

NOW THEREFORE, as part of the valuable consideration to induce the execution of the Schedule, Lessor and Lessee hereby agree to amend the Schedule as follows:

1. In the event that any unit of Equipment covered by the Schedule is a vehicle or trailer under applicable State law, then the following provisions shall also apply to the Schedule to the extent permitted by law,

(a) each manufacturer's statement of origin and certificate of title shall state that Lessor has the first and sole lien on or security interest in such unit of Equipment;

(b) the public liability and property damage insurance required by the terms of the paragraph titled "Insurance in the Master Lease shall be in an amount not less than $1,000,000.00 per person insured and $2,000,000.00 combined single limit per unit per occurrence (provided, that if the unit of Equipment is a bus or other passenger vehicle, then such insurance amount shall be such larger amount as may be reasonably required by Lessor) and $1,000,000.00 for damage to property of others;

(c) Lessee shall furnish and permit only duly licensed, trained, safe and qualified drivers to operate any such unit of Equipment, and such drivers shall be agents of Lessee and shall not be agents of Lessor; and

(d) Lessee shall cause each such unit of Equipment to be duly registered and licensed as required by applicable State law with Lessor noted as lien holder and Lessee as owner.

2. Except as expressly amended by this Addendum and other modifications signed by Lessor, the Schedule remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first referenced above.

City of Stockton
("Lessee")

By: [signature]

Title: City Manager

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title: Operations Manager

APPROVED AS TO FORM

CITY ATTORNEY

By: [signature]
Deputy City Attorney

ATTEST:
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

By [signature]

STOCKTON FOUNDED JUNE 1849 INCORPORATED JULY 1850

DUPLICATE

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CERTIFICATE OF INCUMBENCY

Lessee: City of Stockton

Lease Schedule No. 157862000 Dated: February 10, 2012

I, the undersigned Secretary/Clerk identified below, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee (the "Lessee"), a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

[NOTE: Use same titles as Authorized Representatives stated in Resolutions.]

Name	Title	Signature
Bob Deis	City Manager	

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such Lessee as of the date set forth below.

Bonnie Paige
Signature of Secretary/Clerk of Lessee

STOCKTON FOUNDED JUNE 1849 * INCORPORATED JULY 1850 * SEAL

Print Name: Bonnie Paige

Official Title: City Clerk

Date: 2/8/12

Resolution No. 2012-01-24-1504

STOCKTON CITY COUNCIL

RESOLUTION APPROVING FINDINGS AND AWARDING A CONTRACT TO PIERCE MANUFACTURING AND A LEASE-PURCHASE AGREEMENT TO OSHKOSH CAPITAL FOR THE ACQUISITION OF FOUR PIERCE QUANTUM 1500 GALLONS PER MINUTE PUMPERS AND AMENDING THE 2011-2012 BUDGET TO REFLECT THIS PURCHASE

The City of Stockton ("City") is a political subdivision, duly organized and existing pursuant to the laws of the State of California; and

The City hereby finds and determines that the execution of a Contract with Pierce Manufacturing and a Master-Lease Purchase Agreement with Oshkosh Capital, in the amount of $1,795,506.44, for the purpose of acquiring four Pierce Quantum 1500 Gallons Per Minute ("GPM") Fire Pumpers, as more particularly described in the Lease, is appropriate and necessary for the function and operation of the City; and

The City shall act as Lessee and Oshkosh Capital shall act as Lessor under said Lease; and

Stockton Municipal Code ("SMC") section 3.68.070 provides for an exception to the competitive bidding requirements in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. SMC section 3.68.070 provides for an exception to the competitive bidding requirements for contracts where the City Council has approved findings which support and justify a purchase via a cooperative purchase agreement. The findings are as follows:

   a. The County of Alameda has completed a Request for Quotations (RFQ) competitive bidding process and required that a cooperative purchase agreement be included with its bid award to Golden State Fire Apparatus as the successful lowest bidder.
   b. Golden State Fire Apparatus is the Northern California dealer/representative for Pierce Manufacturing Company and will honor the cooperative purchasing agreement established with the County of Alameda, which runs through September 2012.
   c. The bid specifications used by the County of Alameda are compatible with the specifications for the City.
   d. Pierce Fire Apparatus Company has agreed to make modifications to some of the specifications, which are reflected in the delivery price through its dealer/representative, Golden State Fire Apparatus, which will

City Atty:
Review
Date January 18, 2012

DUPLICATE

provide a savings to the City and result in additional lower maintenance costs and down time.

e. Oshkosh Capital is the financing arm of Pierce Manufacturing and is offering the lease-purchase financing of the Fire Pumpers.

f. The cost maintenance history maintained by Fleet Services demonstrates that the cost of maintaining the current fleet of Pierce apparatus is less per pumper than other manufacturer's brands in the fleet.

g. The vehicles recommended for replacement have far exceeded their useful life and are increasingly unreliable and costly to maintain.

h. There is an immediate need to replace older fire apparatus in the Fire fleet in order to provide safe, reliable, and effective Fire Pumpers for emergency operations in the City.

2. The City Manager is authorized to enter into and execute a contract with Pierce Manufacturing, in a form substantially similar to Exhibit 1, and a Master-Lease Purchase Agreement with Oshkosh Capital, in a form substantially similar to Exhibit 2, both of which are attached and incorporated herein by reference.

2. The aggregate original principal amount of the Lease shall not exceed $1,795,506.44, and shall bear interest as set forth in the Lease, and the Lease shall contain such options to purchase by the City as set forth therein.

3. The City's obligations under the Lease shall be subject to annual appropriation or renewal by the City as set forth in the Lease and the City's obligations under the Lease shall not constitute general obligations of the City or indebtedness under the Constitution or laws of the State.

4. The 2011-2012 Budget shall be amended as follows to reflect this purchase:

	Current Budget	Change	Proposed Budget
Fleet Internal Service Fund			
Revenues			
Lease financing proceeds	$0	$1,795,506	$1,795,506
Expenditures			
Equipment replacement	$1,000,000	795,506	$1,795,506
Net impact to available fund balance	($1,000,000)	$1,000,000	$0

5. The City Manager is authorized and directed to take the actions that are appropriate to carry out the purpose and intent of the resolution.

DUPLICATE

6. This resolution shall take effect immediately upon its adoption and approval.

PASSED, APPROVED, and ADOPTED January 24, 2012.

ANN JOHNSTON
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton

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DUPLICATE

CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CA 95202-1997
TELEPHONE (209) 937-8333
FACSIMILE (209) 937-8898

February 6, 2012

Lessee: City of Stockton

Lessor: Oshkosh Capital

Re: **Lease Schedule No. 157862000 dated February 10, 2012, together with its Master Lease-Purchase Agreement dated February 10, 2012, by and between the above-named Lessee and the above-named Lessor**

Gentlemen:

I have acted as counsel to Lessee with respect to the Lease Schedule, the Master Lease-Purchase Agreement and all other agreements described above or related thereto (collectively, the "Agreements") and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Agreements and such other documents as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents, it is my opinion that:

1. Lessee is a political subdivision of the State of California (the "State") duly organized, existing and operating under the Constitution and laws of the State.

2. Lessee is authorized and has power under State law to enter into all of the Agreements, and to carry out its obligations thereunder and the transactions contemplated thereby.

3. The Agreements and all other documents related thereto have been duly authorized, approved, and executed by and on behalf of Lessee, and each of the Agreements is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal law affecting creditor's remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

DUPLICATE

4. The authorization, approval and execution of the Agreements and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable Local, State and Federal laws (including open meeting laws and public bidding and property acquisition laws).

5. To the best of my knowledge, there is no litigation or proceeding pending before any court, administrative agency or governmental body, that challenges: the organization or existence of Lessee; the authority of its officers; the proper authorization; approval and execution of any of the Agreements or any documents relating thereto; the appropriation of monies to make payments under the Agreements for the current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Agreements and the transactions contemplated thereby.

6. Lessee is a political subdivision of the State as referred to in Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder.

Lessor, its Assignee and any of their assigns may rely upon this opinion.

Thank you.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY D. Solina
DEANNA L. SOLINA
DEPUTY CITY ATTORNEY

DLS:eg

DUPLICATE

CITY OF STOCKTON
HUMAN RESOURCES DEPARTMENT / RISK SERVICES DIVISION
STEWART / EBERHARDT BUILDING • 22 E. Weber Avenue, Suite 150 • Stockton, CA 95202-2317
Phone: 209 / 937-5037 • Fax 209 / 937-5702 • www.stocktongov.com

February 9, 2012

Oshkosh Capital
Attn: Cheryl Kennedy
155 East Broad Street, B4-B230-05-7
Columbus, OH 43215

RE: MASTER PURCHASE AGREEMENT DATED FEBRUARY 10, 2012 RE LEASE OF EQUIPMENT (2012 PIERCE QUANTUM 1500 GPM PUMPERS) FOR CITY OF STOCKTON FIRE DEPARTMENT

The City of Stockton is self-insured for General Liability/Automobile Liability which includes Bodily Injury, Physical Auto Property Damage, Third Party Property Damage and Workers' Compensation for **$1,000,000 CSL.** The party named herein (Oshkosh Capital, its successors and/or all assigns) is only an additional covered party for covered claim arising out of the activity described herein and is subject to the limits stated herein.

Above its self-insured retention, the City of Stockton is a member of the California Joint Powers Risk Management Authority, a pooling arrangement that provides **$40,000,000** excess coverage over the self-insured retention.

The self-insured program is managed and administered by the City of Stockton's Risk Services Division of the Human Resources Department, and the Workers' Compensation program is managed and administered by the City of Stockton's Risk Services Division of the Human Resources Department; the City of Stockton will provide a 30 day written notice prior to cancellation.

Sincerely,

Raeann Cycenas
Risk/Loss Insurance Specialist

Stockton
1999

101 DUPLICATE

THREE PARTY AGREEMENT

February 10, 2012

"Lessee" means City of Stockton

"Schedule" means Lease Schedule No.157862000 Dated February 10, 2012, together with its Schedule A-1.

Reference is made to the Lease Schedule ("Schedule") and to the Master Lease-Purchase Agreement ("Master Lease") identified in said Lease Schedule, described above between Oshkosh Capital ("Lessor") and the Lessee identified above which relates to Equipment described in Schedule A-1 to the Lease Schedule attached therein ("Equipment") to be supplied by Pierce Manufacturing Inc. ("Supplier"). For good and valuable consideration, receipt of which is hereby acknowledged, Lessee, Lessor and Supplier hereby agree as follows:

1. Notwithstanding anything to the contrary in the Lease Schedule, Lessee hereby notifies Lessor that the Equipment has not yet been delivered to Lessee and the Equipment has not yet been accepted by Lessee for purposes of the Lease Schedule. Lessee agrees to execute and deliver to Lessor a Delivery and Acceptance Certificate in the form attached hereto as Exhibit A upon the circumstances set forth in said Certificate.

2. All parties hereto agree that the Purchase Price of the Equipment shall be as set forth below if said Purchase Price is paid on or before the Advance Payment Date set forth below:

Purchase Price:	$1,732,248.60
Sales Tax	$133,000.48
Vendor Discounts:	$69,742.64
Advance Payment Date:	February 10, 2012

3. Upon execution of the Lease Schedule and delivery of all documents relating thereto required by Lessor, Lessee agrees that it shall pay the Lessee Down Payment stated below and Lessor agrees that it shall pay the balance of the Purchase Price (the "Amount Financed") stated below. Lessee agrees that the Lease Term and Lessee's obligation to pay Rent Payments shall commence on the date set forth in the Lease Schedule notwithstanding the delivery of the Equipment at a later date.

Lessee Down Payment:	$0.00
Trade In:	$0.00
Amount Financed:	$1,795,506.44

4. (a) Supplier anticipates that it shall deliver the Equipment to Lessee by the **Anticipated Delivery Date** set forth below.

Anticipated Delivery Date: October 10, 2012

(b) Supplier hereby agrees that it shall deliver the Equipment to Lessee no later than the **Outside Delivery Date** set forth below and that such Equipment shall comply with all specifications and requirements of Lessee and with the terms and conditions of any purchase order/purchase agreement relating thereto.

Outside Delivery Date: December 10, 2012

DUPLICATE

5. If for any reason whatsoever Supplier fails to comply with its agreements set forth in **subparagraph 4(b)** of this Agreement by the Outside Delivery Date for any piece of Equipment (the "Delayed Equipment"), and the Lessee has not agreed to revise the Outside Delivery Date with respect to such Delayed Equipment, then Supplier hereby agrees as follows only for the Delayed Equipment:

(a) On the first business day after the Outside Delivery Date, Supplier shall pay to Lessee the Lessee Down Payment for the Delayed Equipment plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment;
(b) On the first business day after the Outside Delivery Date, Supplier shall pay to Lessor for the Delayed Equipment the Amount Financed plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment; and
(c) "Prime Rate" means the prime rate of interest as published from time to time in the Wall Street Journal.

If there is more than one piece of Equipment subject to the Lease, and some of the Equipment is delivered in accordance with subparagraph 4(b) of this Agreement, the payments owed pursuant to the Lease shall be modified to reflect only the obligations due on the Equipment that was delivered pursuant to subparagraph 4(b) of this Agreement. The new payment obligation will be determined based on the amount financed for the Equipment delivered to the Lessee, and based on the interest rate in effect as of the date of Lease commencement.

6. If Supplier makes the payments described in **paragraph 5** above for the Delayed Equipment under the circumstances set forth above and if Lessee has otherwise paid and performed its obligations under the Lease Schedule as of such payment date for the Delayed Equipment, then Lessee and Lessor agree that the Lease Schedule shall terminate as of the date of such payments by Supplier as to the Delayed Equipment only. Lessee's obligations shall continue unabated for the Equipment that was delivered pursuant to subparagraph 4(b) of this Agreement.

7. Supplier agrees that a Performance Bond will be issued which names the Supplier as Principal, the Lessee as Obligee and the Lessor as Additional Obligee. This Performance Bond will apply solely to the terms and conditions of the purchase order/purchase agreement, including related equipment specifications and warranties, as issued by the lessee and accepted by the Supplier. The "Contract Date" referred to in the Performance Bond shall be the date of the Three Party Agreement. Except as expressly set forth herein, the Lease Schedule and the terms and conditions of the purchase order/purchase agreement for the equipment remain unchanged and in full force and effect.

8. Except as expressly set forth herein, the Lease Schedule and terms and conditions of the purchase order/purchase agreement for the Equipment remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the duly authorized officers of the parties set forth below hereby execute and deliver this Agreement as of the date first written above.

City of Stockton
("Lessee")

By: _____

Title: City Manager

Pierce Manufacturing Inc.
("Supplier")

By: _____

Title: _____

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title: Operations Manager

APPROVED AS TO FORM

CITY ATTORNEY

By _____
Deputy City Attorney

ATTEST:
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

By _____

STOCKTON FOUNDED JUNE 1849 INCORPORATED JULY 1850

5. If for any reason whatsoever Supplier fails to comply with its agreements set forth in **subparagraph 4(b)** of this Agreement by the Outside Delivery Date for any piece of Equipment (the "Delayed Equipment"), and the Lessee has not agreed to revise the Outside Delivery Date with respect to such Delayed Equipment, then Supplier hereby agrees as follows only for the Delayed Equipment:

(a) On the first business day after the Outside Delivery Date, Supplier shall pay to Lessee the Lessee Down Payment for the Delayed Equipment plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment;
(b) On the first business day after the Outside Delivery Date, Supplier shall pay to Lessor for the Delayed Equipment the Amount Financed plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment; and
(c) "Prime Rate" means the prime rate of interest as published from time to time in the Wall Street Journal.

If there is more than one piece of Equipment subject to the Lease, and some of the Equipment is delivered in accordance with subparagraph 4(b) of this Agreement, the payments owed pursuant to the Lease shall be modified to reflect only the obligations due on the Equipment that was delivered pursuant to subparagraph 4(b) of this Agreement. The new payment obligation will be determined based on the amount financed for the Equipment delivered to the Lessee, and based on the interest rate in effect as of the date of Lease commencement.

6. If Supplier makes the payments described in **paragraph 5** above for the Delayed Equipment under the circumstances set forth above and if Lessee has otherwise paid and performed its obligations under the Lease Schedule as of such payment date for the Delayed Equipment, then Lessee and Lessor agree that the Lease Schedule shall terminate as of the date of such payments by Supplier as to the Delayed Equipment only. Lessee's obligations shall continue unabated for the Equipment that was delivered pursuant to subparagraph 4(b) of this Agreement.

7. Supplier agrees that a Performance Bond will be issued which names the Supplier as Principal, the Lessee as Obligee and the Lessor as Additional Obligee. This Performance Bond will apply solely to the terms and conditions of the purchase order/purchase agreement, including related equipment specifications and warranties, as issued by the lessee and accepted by the Supplier. The "Contract Date" referred to in the Performance Bond shall be the date of the Three Party Agreement. Except as expressly set forth herein, the Lease Schedule and the terms and conditions of the purchase order/purchase agreement for the equipment remain unchanged and in full force and effect.

8. Except as expressly set forth herein, the Lease Schedule and terms and conditions of the purchase order/purchase agreement for the Equipment remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the duly authorized officers of the parties set forth below hereby execute and deliver this Agreement as of the date first written above.

City of Stockton
("Lessee")

By: _____

Title: _____

Oshkosh Capital
("Lessor")

By: Sandra Thomas

Title: **Sandra Thomas**
Assistant Vice President

Pierce Manufacturing Inc.
("Supplier")

By: _____

Title: Director - Finance

Exhibit A

DELIVERY & ACCEPTANCE CERTIFICATE

Lease Schedule No.157862000

Reference is made to the above Lease Schedule ("Schedule"), which has been executed and delivered by the undersigned Lessee ("Lessee") and Oshkosh Capital ("Lessor"). This Certificate amends and supplements the terms and conditions of the Lease Schedule and is hereby made a part of the Lease Schedule. Unless otherwise defined herein, capitalized terms defined in the Master Lease-Purchase Agreement and the Lease Schedule shall have the same meaning when used herein; provided, that "Equipment" shall mean the Equipment described in the Schedule A-1 and in any attachment or exhibit to this Certificate.

Notwithstanding anything to the contrary, expressed or implied, in the Lease Schedule or its Schedule A-1, Lessee agrees as follows:

1. ACCEPTANCE OF EQUIPMENT. As of the Acceptance Date stated below and as between Lessee and Lessor, Lessee hereby agrees that: (a) Lessee has received and inspected all Equipment; (b) all Equipment is in good working order and complies with all purchase orders, contracts and specifications; (c) Lessee accepts all Equipment for purposes of the Lease "as-is, where-is"; and (d) Lessee waives any right to revoke such acceptance.

ACCEPTANCE DATE:_____

2. RENT PAYMENTS. Lessee hereby agrees that Lessee will pay the Rent Payments for the Equipment in the amounts and on the dates specified in Schedule A-1 to the Lease Schedule.

City of Stockton
("Lessee")

By: _____

Title: _____

Form **8038-G**
(Rev. September 2011)
Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate instructions.
Caution: *If the issue price is under $100,000, use Form 8038-GC.*

OMB No. 1545-0720

Part I **Reporting Authority** — If Amended Return, check here ▶ ☐

1 Issuer's name City of Stockton	2 Issuer's employer identification number (EIN) 94-6000436
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)	3b Telephone number of other person shown on 3a
4 Number and street (or P.O. box if mail is not delivered to street address) / Room/suite 425 N. El Dorado Street	5 Report number *(For IRS Use Only)* 3
6 City, town, or post office, state, and ZIP code Stockton, CA 95202	7 Date of issue 2/10/2012
8 Name of issue Lease Schedule #157862000	9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) Susan Mayer, Chief Financial Officer	10b Telephone number of officer or other employee shown on 10a 209 937 8398

Part II **Type of Issue (enter the issue price).** See the instructions and attach schedule.

11	Education	11		
12	Health and hospital	12		
13	Transportation	13		
14	Public safety	14	1,795,506	44
15	Environment (including sewage bonds)	15		
16	Housing	16		
17	Utilities	17		
18	Other. Describe ▶	18		
19	If obligations are TANs or RANs, check only box 19a ▶ ☐ If obligations are BANs, check only box 19b ▶ ☐			
20	If obligations are in the form of a lease or installment sale, check box ▶ ☑			

Part III **Description of Obligations.** Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	2/10/2022	$ 1,795,506.44	$ 1,795,506.44	10 years	3.300 %

Part IV **Uses of Proceeds of Bond Issue (including underwriters' discount)**

22	Proceeds used for accrued interest			22	
23	Issue price of entire issue (enter amount from line 21, column (b))			23	1,795,506 44
24	Proceeds used for bond issuance costs (including underwriters' discount)	24			
25	Proceeds used for credit enhancement	25			
26	Proceeds allocated to reasonably required reserve or replacement fund	26			
27	Proceeds used to currently refund prior issues	27			
28	Proceeds used to advance refund prior issues	28			
29	Total (add lines 24 through 28)			29	
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	1,795,506 44

Part V **Description of Refunded Bonds.** Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded ▶ _____ years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded ▶ _____ years
33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) ▶
34 Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY)

DUPLICATE

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a	
b	Enter the final maturity date of the GIC ▶		
c	Enter the name of the GIC provider ▶		
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37	

38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the following information:

b Enter the date of the master pool obligation ▶

c Enter the EIN of the issuer of the master pool obligation ▶

d Enter the name of the issuer of the master pool obligation ▶

39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ ☑

40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ ☐

41a If the issuer has identified a hedge, check here ▶ ☐ and enter the following information:

b Name of hedge provider ▶

c Type of hedge ▶

d Term of hedge ▶

42 If the issuer has superintegrated the hedge, check box ▶ ☐

43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ ☐

44 If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ ☐

45a If some portion of the proceeds was used to reimburse expenditures, check here ▶ ☐ and enter the amount of reimbursement ▶

b Enter the date the official intent was adopted ▶

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ Signature of issuer's authorized representative — Date 2/8/12 — ▶ Bob Deis, City Manager — Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name ▶ — Firm's EIN ▶

Firm's address ▶ — Phone no.

ANNOTATED AGENDA
CITY COUNCIL/REDEVELOPMENT AGENCY/PUBLIC FINANCING AUTHORITY CONCURRENT
MEETING OF JANUARY 24, 2012

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1. CLOSED SESSION CALL TO ORDER / ROLL CALL

Councilmember Lowery will participate in the Closed Session meeting via teleconference. Location: Palm Valley Country Club, 38-636 Lobelia Circle, Palm Desert, CA 92211 3:01 PM

Roll Call 3:03 PM
Present:
Councilmember Canepa
Councilmember Holman
Councilmember Lowery
Vice Mayor Miller
Mayor Johnston

Absent:
Councilmember Eggman, and Councilmember Fritchen.

NOTE: Councilmember Eggman arrived to Closed Session at 3:08 p.m. Councilmember Fritchen arrived to Closed Session at 3:09 p.m.

2. ADDITIONS TO CLOSED SESSION AGENDA***

None.

3. ANNOUNCEMENT OF CLOSED SESSION 3:03 PM

3.01 **CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION 3:03 PM**

Number of Cases: One

Name of Case: Stockton Police Officers' Association v. City of Stockton, et al. (San Joaquin County Superior Court Case No. 39 2010-00245197)

Case 12-32118 Filed 01/16/13 Doc 668

This Closed Session is authorized pursuant to Section 54956.9(a) of the Government Code.

3.02 **CONFERENCE WITH LABOR NEGOTIATOR 3:03 PM**

Agency Designated Representative: Bob Deis

Employee Organizations; Unrepresented Units: Stockton City Employees' Association; Operating Engineer's Local 3; Mid-Management/ Supervisory Level Unit; Unrepresented Management/ Confidential; Law Department; Stockton Police Management Association; Stockton Firefighters Local 456 International Association of Firefighters; Stockton Fire Management, Stockton Police Officers' Association (SPOA)

This Closed Session is authorized pursuant to Section 54957.6(a) of the Government Code.

3.03 **CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION 3:03 PM**

Number of Cases: Two

Based on existing facts and circumstances, there is significant exposure to litigation pursuant to Government Code section 54956.9 (c).

4. PUBLIC COMMENT* 3:03 PM

None.

5. RECESS TO CLOSED SESSION 3:03 PM

The Council recessed to Closed Session at 3:02 p.m. The Council returned from Closed Session and recessed at 5:05 p.m.

6. REGULAR SESSION CALL TO ORDER / ROLL CALL 5:30 PM

Case 12-32118 Filed 01/16/13 Doc 668

Roll Call 5:31 PM
Present:
Councilmember Canepa
Councilmember Eggman
Councilmember Fritchen
Councilmember Holman
Vice Mayor Miller
Mayor Johnston

Absent:
Councilmember Lowery.

7. INVOCATION/PLEDGE TO FLAG 5:31 PM

Pastor Wayne Bibelheimer of Quail Lakes Baptist Church provided the Invocation. The Pledge of Allegiance was led by Councilmember Fritchen.

8. REPORT OF ACTION TAKEN IN CLOSED SESSION 5:33 PM

No reportable action.

9. ADDITIONS TO REGULAR SESSION AGENDA***

None.

10. PROCLAMATIONS, COMMENDATIONS OR INVITATIONS 5:33 PM

10.01 PROCLAMATIONS

None.

10.02 CERTIFICATES

None.

11. CITIZENS' COMMENTS, ANNOUNCEMENTS OR INVITATIONS* 5:34 PM

Case 12-32118 Filed 01/16/13 Doc 668

Julie Schardt - Mormon Slough

Patty Partch Lovato - Mormon Slough

David Bregante - spoke about his uncle

Paula Sheil - Stockton Arts Commission Grant Program

Adolf Egorff - crime in Stockton

Afex - negativity in Stockton

Ron Hagan, owner - American Basketball Association Port City Pirates Basketball Team

Wallace Bryant, coach of the Port City Pirates Basketball Team - encouraged community support of this team

Jawon Mach, player for the Port City Pirates Basketball Team - encouraged community support of this team

Lavar Neufille, player for the Port City Pirates Basketball Team - encouraged community support of this team

Colleen Root, American Cancer Society - requested Council endorsement of the California Cancer Research Act Resolution (filed)

LINK TO 2012-01-24 Council Agenda Item 11 - Filed Colleen Root (PDF)

Susan Mudd - support of the California Cancer Research Act

Marty Holmes - support of the California Cancer Research Act

Dawn Correll-Cruz - support of the California Cancer Research Act

Tocan Nguyen - shared her political views

Diana Buettner - Mormon Slough

Dennis Henry Delsieder - experience of hit and run incident

Erica Gonzalez - Mormon Slough

Case 12-32118 Filed 01/16/13 Doc 668

Ramiro Reyes - crime in Stockton, people working together

Charlene Leathers Sibblis - Mormon Slough

Reverend Margie Brown - Mormon Slough

Maria Gonzales - crime in Stockton

12. CONSENT AGENDA 6:32 PM

Motion: Approve CONSENT AGENDA
Moved by Councilmember Fritchen, seconded by Councilmember Holman

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston. Absent:Councilmember Lowery.

12.01 CC - PURCHASE OF ONE HYDRO-VAC SEWER CLEANER

Motion 2012-01-24-1201 approving the purchase of a Hydro-Vac Sewer Cleaning Unit for $310,204.08 from 3T Equipment of Santa Rosa, California. (MUD)

LINK TO 2012-01-24 Council Agenda Item 12.01 Staff Report (PDF)

12.02 CC - AMEND THE FRANCHISE AGREEMENTS FOR THE COLLECTION OF SOLID WASTE, RECYCLABLE MATERIALS, GREEN WASTE, AND FOOD WASTE AND STREET SWEEPING WITH ALLIED WASTE AND WASTE MANAGEMENT

Motion 2012-01-24-1202 amending Exhibit F (City Buildings to be Serviced by Contractor) and Exhibit G (City Special Events to be Serviced by Contractor) of the Franchise Agreements for the Collection of Solid Waste, Recyclable Materials, Green Waste, and Food Waste with Allied Waste and Waste Management to reflect updates and changes in service levels. (PW)

LINK TO 2012-01-24 Council Agenda Item 12.02 Staff Report (PDF)

12.03 CC - SUBMITTAL OF SIX GRANT APPLICATIONS TO DEPARTMENT OF TRANSPORTATION AND APPROVE USE OF DESIGNATED MATCHING FUNDS

Case 12-32118 Filed 01/16/13 Doc 668

Motion 2012-01-24-1203 authorizing the submittal of six grant applications to the Department of Transportation and approve the use of designated matching funds. It is further recommended that the motion authorize the City Manager to execute associated agreements and undertake any other actions that may be appropriate to accept, receive, and spend the funding when available. (PW)

LINK TO 2012-01-24 Council Agenda Item 12.03 Staff Report (PDF)

12.04 **CC - AUTHORIZE A PROPOSITION 218 PUBLIC NOTICE AND PROTEST HEARING PROCESS TO ADD COMMERCIAL SOLID WASTE SERVICES TO THE RATE SCHEDULE**

Resolution 2012-01-24-1204 approving the following:

1. Authorize a Proposition 218 Public Notice And Protest Hearing on March 27, 2012, to consider the request by the solid waste franchisees Allied Waste and Waste Management to add new commercial solid waste services to the rate schedule.

2. Authorize the City Manager to send 45-day Proposition 218 Public Notices to commercial solid waste customers informing them of added services and rates, which will include green waste and food waste collection, late payment fees, bin/container locking devices and fees, and front load two, three, and four-yard compactors. (PW)

LINK TO 2012-01-24 Council Agenda Item 12.04 Staff Report (PDF)

LINK TO 2012-01-24 Council Agenda Item 12.04 - Reso 2012-01-24-1204 (PDF)

12.05 **SETTING A PUBLIC HEARING TO AMEND THE 2011-12 FEE SCHEDULE BY INCORPORATING A CITY-OWNED MIRACLE MILE PARKING LOT RENTAL FEE**

Motion 2012-01-24-1205 setting a public hearing on February 7, 2012, to amend the General Parking 2011-12 Fee Schedule by incorporating a City-owned Miracle Mile Parking Lot rental fee that will accompany a Miracle Mile Parking Lot rental policy. (EDD)

LINK TO 2012-01-24 Council Agenda Item 12.05 Staff Report (PDF)

Case 12-32118 Filed 01/16/13 Doc 668

12.06 **CC/RD - Approve minutes of the regular City Council/Redevelopment Agency meetings of September 13, 2011, December 6, 2011, December 13, 2011, January 10, 2012, and the minutes of the Special meetings of October 31, 2011, November 28, 2011, and December 12, 2011. (CLERK)**

LINK TO 2012-01-24 Council Agenda Item 12.06 Staff Report (PDF)

13. ADMINISTRATIVE MATTERS

None.

14. UNFINISHED BUSINESS

None.

15. NEW BUSINESS 6:33 PM

15.01 **CC - ADOPTING THE 2012 CITY OF STOCKTON STATE AND FEDERAL LEGISLATIVE PROGRAM 6:33 PM**

Motion action to adopt the 2012 State and Federal Legislative Programs and authorize the City Manager to pursue the objectives outlined in these programs through advocacy efforts in Sacramento and Washington, D.C. (CM)

LINK TO 2012-01-24 Council Agenda Item 15.01 Staff Report (PDF)

Assistant to the City Manager Christian Clegg provided the staff report aided by a PowerPoint presentation (filed).

LINK TO 2012-01-24 Council Agenda Item 15.01 PPS (PDF)

Public Comment:

David Bregante

Motion: Approve **Motion 2012-01-24-1501** adopting the 2012 State and Federal Legislative Programs and authorizing the City Manager to pursue the objectives outlined in these programs through advocacy efforts in Sacramento and Washington, D.C.

Case 12-32118 Filed 01/16/13 Doc 668

Moved by Councilmember Eggman, seconded by Vice Mayor Miller

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.
Absent:Councilmember Lowery.

15.02 **CC - UPDATE ON REDEVELOPMENT; ADOPTION OF AN AMENDED REDEVELOPMENT AGENCY ENFORCEABLE OBLIGATION PAYMENT SCHEDULE 6:45 PM**

Resolution to amend the Redevelopment Agency Enforceable Obligation Payment Schedule. (EDD)

LINK TO 2012-01-24 Council Agenda Item 15.02 Staff Report (PDF)

Economic Development Director Wendy Saunders provided the staff report aided by a PowerPoint presentation (filed).

LINK TO 2012-01-24 Council Agenda Item 15.02 PPS (PDF)

Public Comment:

David Bregante

Motion: Approve **Resolution 2012-01-24-1502** amending the Redevelopment Agency Enforceable Obligation Payment Schedule. Moved by Councilmember Holman, seconded by Vice Mayor Miller

Vote: Motion carried 5-1

Yes: Councilmember Canepa, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.
No: Councilmember Eggman.
Absent:Councilmember Lowery.

LINK TO 2012-01-24 Council Agenda Item 15.02 - Reso 2012-01-24-1502 (PDF)

LINK TO 2012-01-24 Council Agenda Item 15.02 - Filed Around The Bench (PDF)

15.03 **CC - AUTHORIZE THE EXECUTION OF PHASE II OF THE**

Case 12-32118 Filed 01/16/13 Doc 668

DESIGN/BUILD CONTRACT WITH DEVCON CONSTRUCTION INCORPORATED FOR THE ASBESTOS ABATEMENT, DEMOLITION OF THE LAND HOTEL, AND THE DESIGN-BUILD OF THE PARKING LOT (PUR 10-010) 7:45 PM

Motion to authorize Phase II of the design/build contract with Devcon Construction Incorporated for the asbestos abatement, demolition of the Land Hotel and the design-build of the parking lot for the guaranteed maximum price of $495,589.00 and to authorize the City Manager to accept the completed project as evidenced by the recordation of the Notice of Completion. (EDD)

LINK TO 2012-01-24 Council Agenda Item 15.03 Staff Report (PDF)

Economic Director Wendy Saunders introduced the item, Joe Mulligan provided the staff report aided by a PowerPoint presentation (filed).

LINK TO 2012-01-24 Council Agenda Item 15.03 PPS (PDF)

Motion: Approve **Motion 2012-01-24-1503** authorizing Phase II of the design/build contract with Devcon Construction Incorporated for the asbestos abatement, demolition of the Land Hotel and the design-build of the parking lot for the guaranteed maximum price of $495,589.00 and authorizing the City Manager to accept the completed project as evidenced by the recordation of the Notice of Completion.
Moved by Vice Mayor Miller, seconded by Councilmember Holman

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.
Absent:Councilmember Lowery.

15.04 **CC - CONTRACT WITH PIERCE MANUFACTURING AND A LEASE-PURCHASE AGREEMENT WITH OSHKOSH CAPITAL FOR THE ACQUISITION OF FOUR PIERCE QUANTUM 1500 GALLONS PER MINUTE PUMPERS, APPROVE FINDINGS, AND AMEND THE 2011-2012 BUDGET TO REFLECT THIS PURCHASE 7:52 PM**

Resolution (a) approving findings, (b) approving a contract with Pierce Manufacturing and a Lease-Purchase Agreement with

Case 12-32118 Filed 01/16/13 Doc 668

Oshkosh Capital for the acquisition of four Pierce Quantum 1500 GPM (gallons per minute) for a negotiated unit price not to exceed $1,795,506.44 ($448,876.61 each); and (c) amending the 2011-2012 budget to reflect this purchase. (FD)

LINK TO 2012-01-24 Council Agenda Item 15.04 Staff Report (PDF) Part 1

LINK TO 2012-01-24 Council Agenda Item 15.04 Staff Report (PDF) Part 2

LINK TO 2012-01-24 Council Agenda Item 15.04 Staff Report (PDF) Part 3

Fire Chief Rudat provided the staff report aided by a PowerPoint presentation (filed).

Public Comment:

David Bregante

Motion: Approve **Resolution 2012-01-24-1504** (a) approving findings, (b) approving a contract with Pierce Manufacturing and a Lease-Purchase Agreement with Oshkosh Capital for the acquisition of four Pierce Quantum 1500 GPM (gallons per minute) for a negotiated unit price not to exceed $1,795,506.44 ($448,876.61 each); and (c) amending the 2011-2012 budget to reflect this purchase.
Moved by Vice Mayor Miller, seconded by Councilmember Fritchen

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.
Absent:Councilmember Lowery.

LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 1

LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 2

LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 3

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LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 4

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LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 6

LINK TO 2012-01-24 Council Agenda Item 15.04 - Reso 2012-01-24-1504 (PDF) Part 7

15.05 **CC - ADOPT FINDINGS AND ISSUE A REQUEST FOR PROPOSAL (RFP) FOR A PHARMACY BENEFIT MANAGER (PBM) 8:05 PM**

Resolution approving findings and authorizing a Request for Proposal (RFP) for a Pharmacy Benefit Manager (PBM), and designate Councilmember Paul Canepa to serve on the Selection Committee. (HR)

LINK TO 2012-01-24 Council Agenda Item 15.05 Staff Report (PDF)

Human Resources Director Teresia Haase, provided the staff report aided by a PowerPoint presentation (filed).

LINK TO 2012-01-24 Council Agenda Item 15.05 PPS (PDF)

Motion: Approve **Resolution 2012-01-24-1505** approving findings and authorizing a Request for Proposal (RFP) for a Pharmacy Benefit Manager (PBM), and designate Councilmember Paul Canepa to serve on the Selection Committee.
Moved by Councilmember Fritchen, seconded by Councilmember Holman

Vote: Motion carried 6-0

Yes: Councilmember Canepa, Councilmember Eggman, Councilmember Fritchen, Councilmember Holman, Vice Mayor Miller, and Mayor Johnston.
Absent:Councilmember Lowery.

LINK TO 2012-01-24 Council Agenda Item 15.05 - Reso 2012-01-24-1505 (PDF)

Case 12-32118 Filed 01/16/13 Doc 668

16. HEARINGS**

None.

17. COUNCIL COMMENTS 8:11 PM

Mayor Johnston - Library's Annual Report; commended the Library for aligning their goals with the Council goals.

Councilmember Holman - spoke to newspaper article regarding Stockton Police Department targeting crime.

Vice Mayor Miller - League of California Cities report on legislation on regional water issues; regional water board fees and permits.

Mayor Johnston - announced that all San Joaquin cities approved the Delta Water Rights Resolution as presented.

Councilmember Eggman - Delta Protection Commission meeting; foreclosures.

Councilmember Canepa - announced that he and Vice Mayor Miller will participate on a panel "All you need to know about running for office" at University of the Pacific.

18. ADJOURNMENT 8:21 PM

PURCHASE CONTRACT

THIS CONTRACT is made and entered into on February 10, 2012, by and between PIERCE MANUFACTURING, INC. c/o GOLDEN STATE FIRE APPARATUS, INC., a corporation, with a business address of 1237 Doker Drive, Modesto, California 95351-2868, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, the Parties desire to enter into a Contract for the purchase of FOUR (4) NEW PIERCE QUANTUM 1500 GPM Fire Pumpers from CONTRACTOR, pursuant to City Council Resolution No. 2012-01-24-1504 , on January 24, 2012.

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

1. CONTRACTOR agrees:

(a) To furnish FOUR (4) NEW PIERCE 1500 GPM QUANTUM Fire Pumpers to CITY in accordance with City Council Resolution No. 2012-01-24-1504.

(b) The term of this Agreement shall begin on February 10, 2012, and shall continue until CONTRACTOR completes construction and delivery of FOUR (4) NEW PIERCE 1500 GMP Fire Pumpers Delivery shall be no later than October 12, 2012.

(c) All terms and conditions of this purchase are the same as those found in Resolution No.2012-01-24-1504, and are hereby incorporated and made a part of this contract.

2. CONTRACTOR agrees to indemnify and protect 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 sum of **ONE MILLION, SEVEN HUNDRED NINETY FIVE THOUSAND, FIVE HUNDRED SIX DOLLARS AND FORTY FOUR CENTS ($1,795,506.44)** pending financing approval of same from Oshkosh Capital, and within thirty (30) days after delivery of equipment to CITY and upon the acceptance thereof, in writing, by the City Manager.

4. Neither the Contract, nor any part thereof, nor monies due or to become due thereunder 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 necessary information and assistance.

6. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the 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.

PIERCE MANUFACTURING, INC. c/o GOLDEN STATE FIRE APPARATUS, INC., a corporation

By Kerry Dereszynski
Kerry Dereszynski, Assistant Corporate Secretary
"CONTRACTOR"

39-0139830
Tax Identification Number

ATTEST:

CITY CLERK

APPROVED AS TO FORM:
Dated: 2/8/2012

JOHN M. LUEBBERKE
CITY ATTORNEY

By
DEPUTY CITY ATTORNEY

CITY OF STOCKTON, a municipal corporation

By
CITY MANAGER
"CITY"

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OSHKOSH CAPITAL
INFORMATION REQUEST

LESSEE NAME: City of Stockton

FEDERAL TAX I.D. # 94-6000436

BILLING ADDRESS:

Bob Murdoch, Director of Public Works
Billing Contact

22 E. Weber Avenue, Rm 301
Street Address or Post Office Box

Stockton, CA 95202
City, State and Zip

209-937-8411 209-937-8277
Phone Number Fax Number

PHYSICAL ADDRESS (IF DIFFERENT):

Street Address or Post Office Box

City, State and Zip

Require Board Approval for Payments? X Yes ____ No

Board Meeting Date? 1/24/12

Require signed vouchers for payments? ____ Yes X No

We typically mail our invoices 30 days in advance. Taking into account a 7-day mail period, do you foresee any problem that would prevent the payment from being received on or before the due date?
____ Yes X No

Please list any special instructions below: