

RESOLUTION NO. R-2024-02
CITY OF FAYETTEVILLE, TENNESSEE

**A RESOLUTION AUTHORIZING THE CITY OF FAYETTEVILLE TO APPLY FOR
FEDERAL ASSISTANCE**

WHEREAS, the City of Fayetteville intends to apply for and accept a Community Facility Loan and/or Grant to be administered by the United States Department of Agriculture Rural Development (USDA RD) herein called the Government in an amount not to exceed \$2,330,047.00 under the terms offered by the Government. The purpose of said funds is to assist in the purchase of a Pierce Ascendant 100' Heavy-Duty Aerial Tower firetruck.

Furthermore, the Mayor of the City of Fayetteville is hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such financial assistance; and to operate the facilities under the terms offered by the government.

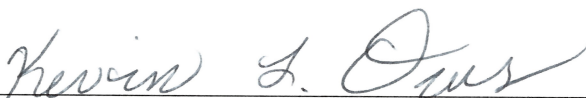
BE IT FURTHER RESOLVED THAT, the City of Fayetteville, Tennessee will issue a General Obligation Bond in the amount of the loan as collateral for the project.

IN WITNESS WHEREOF, the Board of Mayor and Aldermen of the City of Fayetteville has duly adopted this resolution and caused to be executed by the duly elected Mayor of the City of Fayetteville on this 13th day of February, 2024.



Donna Hartman, Mayor
Date: 02/13/2024

ATTEST:



Kevin Owens, City Clerk
Date: 02/13/2024



This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between G&W Diesel/ Emergency Vehicle Specialists Inc., a Tennessee corporation ("EVS"), and Fayetteville Fire Department_ A Municipality ("Customer") is effective as of the date specified in Section 3 hereof.

1. Definitions.

- a. **"Product"** means the fire apparatus and any associated equipment manufactured or furnished for the Customer by EVS pursuant to the Specifications.
- b. **"Specifications"** means the general specifications, technical specifications, training, and testing requirements for the Product contained in the EVS Proposal for the Product prepared in response to the Customer's request for proposal.
- c. **"EVS Proposal"** means the proposal provided by EVS attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. **"Delivery"** means the date EVS is prepared to make physical possession of the Product available to the Customer.
- e. **"Acceptance"** The Customer shall have fifteen (15) calendar days of Delivery to inspect the Product for substantial conformance with the material Specifications; unless EVS receives a Notice of Defect within fifteen (15) calendar days of Delivery, the Product will be deemed to be in conformance with the Specifications and accepted by the Customer.

2. Purpose. This Agreement sets forth the terms and conditions of EVS's sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by EVS's authorized representative pursuant to Section 21 hereof ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$ 2,330,047.00 ("Purchase Price"). Prices are in U.S. funds, F.O.B. at the customer's location.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price to be paid by the Customer. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost. To the extent practicable, EVS will document and itemize any such price increases for the Customer.

5a. Persistent Inflationary Environment Notification: If the Producer Price Index of Components for Manufacturing [www.bls.gov Series ID: WPUID6112] (the "PPI") has increased at a compounded annual growth rate greater than 5.0% from the date of acceptance of this proposal letter (the "Order Month") and 14 months prior to the anticipated Ready for Pickup Date (the "Evaluation Month"), then the proposal price may be increased by an amount equal to any increase exceeding 5.0% for the time period between the Order Month and the Evaluation Month. Siddons Martin and Pierce will provide documentation of such an increase and the updated price for the customer's approval before proceeding with completion of the order along with an option to cancel the order.

6. Agreement Changes. The Customer may request that EVS incorporate a change to the Products or the Specifications for the Products by delivering a change order to EVS; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit EVS to evaluate the feasibility of such change ("Change Order"). Within [seven (7) business days] of receipt of a Change Order, EVS will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. EVS shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order. A Change Order is only effective when counter-signed by EVS's authorized representative.

a. Commercial Chassis Price Volatility. The price reflects an estimate for the commercial chassis; final price of the contract will be adjusted upon final cost from the chassis manufacturer. Company shall not be responsible for any commercial chassis price increases enacted by a commercial chassis supplier after the execution of this contract. Any commercial chassis price increases will be passed through to end user and will be documented on a Change Order.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by a party before completion, EVS may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by EVS; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. EVS endeavors to mitigate any such costs through the sale of such Product to another purchaser; however, Customer shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by EVS upon sale of the Product to another purchaser, plus any costs incurred by EVS to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 45-50 months of the Effective Date of this Agreement, F.O.B. the customer's location. Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible. Risk of loss shall pass to Customer upon Delivery. Title shall pass upon Customer's complete fulfillment of its obligations arising under Section 4 hereof. (b) Inspection and Acceptance. Upon Delivery, Customer shall have fifteen (15) days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the material Specifications to furnish EVS with written notice sufficient to permit EVS to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by EVS within thirty (30) days from the Notice of Defect. In the event EVS does not receive a Notice of Defect within fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

Emergency Vehicle Specialists
Vice President of Apparatus Sales
892 Kansas Street
Memphis TN 38106
901-948-1625

Customer
Fayetteville Fire Department

10. Standard Warranty. Any applicable EVS warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by EVS's authorized representative.

a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER EVS, ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.

b. Exclusions of Incidental and Consequential Damages. In no event shall EVS be liable for consequential, incidental or punitive damages incurred by Customer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery or from EVS's own negligence, or otherwise.

11. Insurance. EVS maintains the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

Commercial General Liability Insurance:

Products/Completed Operations Aggregate: \$1,000,000
Each Occurrence: \$1,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$5,000,000
Each Occurrence: \$5,000,000

The Customer may request: (x) EVS to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured as Customer's interests may appear (subject to the terms and conditions of the applicable EVS insurance policy); and (z) request that, prior to cancellation or non-renewal of the applicable EVS insurance policy, that the issuing carrier endeavor to provide thirty (30) days advance notice to the Customer of any such cancellation or non-renewal.

12. Indemnity. The Customer shall indemnify, defend and hold harmless EVS, its officers, employees, dealers, agents or subcontractors, from any and all claims, costs, judgments, liability, loss, damage, attorneys' fees or expenses of any kind or nature whatsoever (including, but without limitation, personal injury and death) to all property and persons caused by, resulting from, arising out of or occurring in connection with the Customer's purchase, installation or use of goods sold or supplied by EVS which are not caused by the sole negligence of EVS.

13. Force Majeure. EVS shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond EVS's control which make EVS's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

14. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) EVS fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with EVS.

15. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of EVS until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of EVS until the Purchase Price for that Product has been paid in full. In case of any default in payment, EVS may take full possession of the Product, and any payments that have been made shall be applied as payment for the use of the Product up to the date of taking possession.

16. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venturer of or with the other.

17. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. Governing Law; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of Tennessee.

19. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by EVS's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by EVS's authorized representative.

21. Conflict. In the event of a conflict between the Customer Specifications and the EVS Proposal, the EVS Proposal shall control. In the event there is a conflict between the EVS Proposal and this Agreement, the EVS Proposal shall control.

22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by EVS's authorized representative.

Accepted and agreed to:

G&W Diesel/ Emergency Vehicle Specialists

Name: _____

Title: _____

Date: _____

CUSTOMER: City of Fayetteville

Name: Donna Hartman

Title: Mayor

Date: 02/13/2024

EXHIBIT A

PURCHASE DETAIL FORM
Emergency Vehicle Specialists
Vice-President of Apparatus Sales
892 Kansas Street
Memphis TN 38106
901-948-1625

Date: 2/1/2024

Customer Name: Fayetteville Fire Department

Quantity	Chassis Type	Body Type	Price per Unit
1	Enforcer	100 AAT Tower	\$ 2,330,047.00
			\$
			\$
			\$

Warranty Period: As stated in Proposal 1257

Training Requirements: 3 days

Other Matters: Pricing utilizing HGAC Pricing.

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any EVS available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: at delivery if not prepaid

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to EVS.] All taxes, excises and levies that EVS may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by EVS to the Customer shall be for the account of the Customer and shall be added to the Purchase Price. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. EVS will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a substantial nonconformance with material Specifications (other than freight), the Customer may withhold up to five percent (5%) of the Purchase Price until such time that EVS substantially remedies the nonconformance with material Specifications, but no longer than sixty (60) days after Delivery. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled, but no longer than sixty (60) days after Delivery. EVS shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by EVS or any of its affiliated companies to secure payment of the Purchase Price for all such goods and products. In the event of nonpayment by the Customer of any debt, obligation or liability now or hereafter incurred or owing by the Customer to EVS, EVS shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the state of Tennessee.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF 2/1/2024 BETWEEN EVS AND Fayetteville Fire Department WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED BY EVS HEREIN.

EXHIBIT B
WARRANTY

PER PROPOSAL 1257

EXHIBIT C
EVS PROPOSAL

PER PROPOSAL 1257