

AGREEMENT

This agreement ("Agreement") made as of _____, 2011, by and between Seagrave Fire Apparatus, LLC, a _____ limited liability company with headquarters in _____ ("Seagrave") and the Village of Croton-on-Hudson, a New York municipal corporation with offices at 1 Van Wyck Street, Croton-on-Hudson, New York 10520 (the "Village").

WITNESSETH:

WHEREAS, in response to the Village's request for bids for the purchase of a fire tanker apparatus, Excelsior Fire Equipment Sales ("Excelsior") submitted a proposal on behalf of Seagrave; and

WHEREAS, Excelsior was the sole bidder, and

WHEREAS, to reach a lower price on which both parties could agree, the proposal was modified by deleting some of the specifications for optional equipment and by the parties agreeing to full payment up front, and said proposal was submitted to the Village on April 25, 2011 (the "Proposal");

WHEREAS, on May 2, 2011, the Village awarded the bid to Excelsior Fire Equipment Sales for the purchase of a Seagrave fire tanker apparatus based on the Proposal,

NOW THEREFORE, the parties agree as follows:

1. Contract Documents; Definitions.

1.1. The Contract Documents shall consist of this Agreement, the Proposal, the Notice to Bidders, the General Bidding Instructions, the specifications contained within the Proposal, the Approval Drawings, all applicable bonds, all valid change orders, and all valid modifications to such documents.

1.2. "Work" means the construction and delivery of an acceptable Pumper, as defined below, as well as the installation of equipment and provision of services required to fulfill Seagrave's obligations under the Contract Documents.

2. Seagrave shall deliver one (1) unit of Seagrave model Marauder II Pumper and equipment (collectively, the "Pumper") pursuant to the Proposal, which is incorporated herein and made a part of this Agreement. Where this Agreement and any of the other Contract Documents conflict, this Agreement shall control.

3. Performance Bond and Labor and Material Payment Bond. Within ten ~~{(10)}~~ calendar days of receipt of the fully-executed Agreement, Seagrave shall furnish to the Village with terms reasonably satisfactory to the Village Attorney: ~~-(a)-~~ a faithful

Performance Bond in an amount equal to one hundred percent (100%) of the Contract Amount ~~and (b) a Labor and Material Payment Bond in a sum equal to one hundred percent (100%) of the Contract Amount;~~ said bonds being secured from a surety company reasonably satisfactory to the Village.

4. **Payment.** The Village agrees to pay for the Work the sum of Five Hundred Seventy Nine Thousand, Nine Hundred Fifty Three Dollars and Zero Cents (the "Contract Amount"). Payment shall be made in full at the time of order, which shall not occur before the Village's receipt of a Performance Bond ~~and a Labor and Material Payment Bond~~ pursuant to the terms herein.

- 4.1. All payments shall be made payable to Seagrave Fire Apparatus, LLC, and shall be delivered via overnight service to:

Seagrave Fire Apparatus, LLC
3967 Paysphere Circle
Chicago, IL 60674

5. **Delivery.** The Pumper shall be delivered to the Village within **280 calendar days** after Seagrave's receipt of the Order and signed Approval Drawing (the "Delivery Date"), unless extended pursuant to the terms herein or by written agreement between Seagrave and the Village.

- 5.1. Extension of Delivery Date. A delay beyond Seagrave's control occasioned by an act of the federal government, an act of God, or act or omission on the part of the Village or by strikes, lockouts, fire, etc., may entitle Seagrave to an extension of time by which to deliver the Pumper as reasonably determined by the Village Manager or his designee; provided, however, that Seagrave shall, as soon as reasonably possible, immediately give written notice to the Village Manager for the cause of such delay and the Village Manager notes his acceptance in writing. In no case will such delay cause Seagrave to be entitled to additional compensation. Any argument by Seagrave that insufficient time was specified will not be a valid reason for an extension of time.

- 5.2. Whether caused by the Village, Seagrave or third-party or intervening event, the Village and Seagrave shall use reasonable efforts to mitigate any delay in delivery. Mitigation efforts include, but are not limited to, re-sequencing activities, acceleration, and continuation of work through an otherwise planned shutdown period. Seagrave and the Village Manager must explore and discuss potential mitigation efforts in a timely manner.

- 5.3. The Pumper shall not be delivered to either the Village or the dealer within four days of a snow storm or if a snow storm is expected within 12 hours of any point of the delivery route, in which case the Delivery Date shall be so extended. This is to prevent the accumulation of road salt prior to delivery.

6. **Testing.** When the Pumper is delivered, the Village shall, within a reasonable time thereafter, conduct tests to ensure its proper performance. In the event the Pumper fails to meet the test requirements on the first trials, Seagrave may request second trials, as long as such request is made within thirty (30) days of the last day of the first trials. Such second trials shall be final and conclusive, and failure to comply with the requirements a second time shall be cause for rejection.
7. **Acceptance.** Acceptance of the delivered Pumper shall be made at the completion of all required successful tests and the receipt of all specified equipment (the "Acceptance Date"). Equipment items not delivered at the time of the tests or construction not in conformance with the Proposal or applicable change orders shall be cause for the Village to withhold acceptance.
8. **Liquidated Damages.** Seagrave and the Village recognize that time is of the essence and that the Village will suffer financial loss if the Pumper conforming to the Proposal or applicable change orders is not delivered by the Delivery Date, plus any applicable extensions. The liquidated damages charge, as set up, is not a penalty but is intended to compensate the Village for such financial loss. Failure by Seagrave to deliver such acceptable Pumper by the Delivery Date, plus any applicable extensions, shall result in an assessment of \$100 per calendar day against Seagrave from the Delivery Date until an acceptable Pumper is delivered to the Village. Such liquidated damages shall be payable to the Village with ten days of the Acceptance Date. Seagrave and Seagrave's sureties shall be liable to the Village for such liquidated damages.
9. **Warranty.** Seagrave guarantees that all articles of equipment including all parts thereof are of first quality throughout and comply in ALL respects to standards in the Proposal. Except as otherwise provided herein, Seagrave further guarantees all equipment and all parts thereof against any defects without cost to the Village and shall replace any article that has become defective for one (1) year from the Acceptance Date.
 - 9.1. Seagrave shall be certified by the materials manufacturers and authorized to extend the manufacturers' minimum one (1) year warranty for all materials provided. All other warranties and guarantees obtained by Seagrave shall be assigned to the Village.
 - 9.2. In the event of failure of Seagrave or component manufacturer to repair such articles within ~~ten (10) days for a minor repair, and fifteen (15) days for a major repair,~~thirty (30) days from the date of notice, the Village may have the Work done by others and charge the cost of money due, or that may become due, and Seagrave agrees to pay the Village such cost. Notwithstanding the foregoing, should Seagrave need to order necessary materials from suppliers, the thirty (30) days may be extended by the number of days until Seagrave receives such materials, as long as such time is reasonable. Seagrave orders the materials as soon as possible from the date of notice, diligently pursues delivery of the materials, and notifies the Village Manager of such delay.

- 9.3. Where a component manufacturer provides an independent warranty that exceeds the required periods herein and fully covers all costs involved, the provisions of the independent warranty shall not be diminished by anything contained herein.

~~9.4. The Performance Bond shall recite this warranty and the warranty shall be guaranteed by the Surety Company.~~

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~~9.4. **Rejected Work and Materials.** All materials that do not conform to the requirements of the Contract Documents or are in any way unsatisfactory or unsuited to the purpose for which they are intended, shall be rejected. Any defective Work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed by Seagrave, and Seagrave shall re-execute the Work within thirty (30) days after written notice is given by the Village Manager within five (5) days after written notice is given by the Village Manager, and the Work shall be re-executed by Seagrave. Notwithstanding the foregoing, should Seagrave need to order necessary materials from suppliers, the thirty (30) days may be extended by the number of days until Seagrave receives such materials, as long as such time is reasonable, Seagrave orders the materials as soon as possible from the date of notice, diligently pursues delivery of the materials, and notifies the Village Manager of such delay.~~

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10. The fact that the Village may have previously overlooked such defective Work or materials shall not constitute an acceptance of any part of it.
11. **Maintenance Bond.** A maintenance bond in the amount of _____ percent (___%) of the Contract Amount with a corporate surety approved by the Village shall be required. This bond shall be provided before the Delivery Date and shall guarantee the repair of all damage due to faulty materials or workmanship provided or done by Seagrave. This guarantee shall remain in effect for a period of _____ after the Acceptance Date.
12. **Assignment.** Seagrave shall not assign, transfer, convey, sublet, subcontract or otherwise dispose of the Agreement or the right, title or interest therein, or its power to execute such Agreement, to any other person, company, corporation or entity without the express, previous written consent of the Village, which may be withheld at the Village's sole discretion.
13. **Release of Liens.** Unless and until Seagrave delivers to the Village a complete release of all liens arising out of this Agreement, the Village may not accept the Pumper. If any lien remains unsatisfied after the Acceptance Date, Seagrave or its surety shall refund to the Village such amounts as the Village may have been compelled to pay in discharging such liens, including all costs and cost incurred by the Village for all legal fees.

14. **Default; Termination.** The Village may terminate this Agreement upon seven (7) days written notice to Seagrave if Seagrave has breached a material provision of this Agreement and failed to cure the same within ~~five (5)~~fifteen (15) days of written notice thereof. Notwithstanding the foregoing, if the time to cure said default is required by law to be fewer than ~~fifteen~~five (15) days, Seagrave shall cure such default within the time required by law.
- 14.1. The Village may also terminate this Agreement immediately if Seagrave: (i) ceases business, becomes insolvent, commences to wind-up, or becomes subject to any insolvency, bankruptcy or similar proceedings; (ii) makes an assignment for the benefit of creditors; or (iii) files a petition under any bankruptcy, insolvency or similar law providing for the relief of debtors, or has any petition filed against it, and such party fails to have such petition stayed or lifted within ten (10) days from the date on which the petition is entered.
- 14.2. Termination of the Agreement shall in no way affect the Village's right (a) to take any an all actions available under the law; (b) to rely on any applicable bond; or (c) to perform the work and charge such work to Seagrave; and/or (d) receive a refund from Seagrave of monies paid to it pursuant to this Agreement.
- 14.3. On any termination of this Agreement by the Village, Seagrave and Seagrave's ~~sureties-surety~~ shall be liable to the Village for liquidated damages for any delay in the delivery of an acceptable Pumper pursuant to the terms herein. Notwithstanding the foregoing, if within one year following termination of this Agreement, the Village does not pursue the acquisition, but not necessarily the actual delivery, of an acceptable Pumper pursuant to the terms herein, Seagrave shall not be liable for such liquidated damages.
- 14.4. This Section ~~14~~ shall survive termination of this Agreement.
15. **Defense and Indemnification.** Seagrave shall indemnify, hold harmless and defend the Village, its officers, directors, agents, volunteers and employees from and against any and all costs, losses, liability, claims and expenses (including reasonable legal fees) incurred in connection with, or arising from, any claim, legal action, or proceeding arising out of this Agreement against the Village or any such person so indemnified by any third party in relation to: (i) a breach of any of the representations and warranties made by Seagrave; (ii) a breach of the Agreement by Seagrave; or (iii) the negligence or willful misconduct of Seagrave; provided, in each case, that Seagrave is notified promptly, in writing, of any such suit, action, or threat thereof, and is given full and complete authority, information and assistance by the Village for the defense and settlement of the same.
- 15.1. Seagrave shall, at its own option, settle or defend, at its own expense and with its own counsel, the claim. The Village shall have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but Seagrave shall have the right to control the settlement or defense. Seagrave may settle any claim on the Village's behalf if: (i) there is no

finding or admission or any violation of Law or any violations of the rights of the Village; (ii) the sole relief provided is monetary damages that are paid in full by Seagrave; and (iii) any compromise or settlement of such claim effected without the Village's consent includes, as an unconditional term thereof, the giving by the claimant or plaintiff of a release to the Village reasonably satisfactory to the Village Attorney, from all liability with respect thereto. Otherwise, Seagrave shall not enter into any settlement that imposes any liability or obligation on the Village without the Village's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The parties will cooperate in the settlement or defense and give each other full access to all relevant information.

15.2. Such indemnification, defense and hold harmless shall apply to any willful acts or omissions by Seagrave, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

16. **Proprietary Information.** The New York State Freedom of Information Law (Public Officers Law, Article 6) provides for public access to information. Public Officers Law § 87(d)(2) provides for exceptions to disclosure for records or portions thereof that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information that Seagrave wishes to have treated as proprietary and confidential trade information shall be identified and labeled "Confidential" or "Proprietary" at the time of submittal. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. Labeling such information as "Confidential" or "Proprietary" does not guarantee non-disclosure, and the Village shall not be liable to Seagrave for any disclosure made in good faith under the Freedom of Information Law.

17. **Independent Contractor.** Seagrave is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the Village, nor make any claim, demand or application to or for any right based upon any different status.

18. **Title and Risk of Loss.** Title and Risk of Loss shall not pass to the Village until the Pumper is delivered and accepted without reservation or exception by the Village.

19. **Notice.**

19.1. All notices shall be addressed as follows, and shall be deemed given when received by the recipient:

If to the Village:
Village Manager
Village of Croton-on-Hudson
1 Van Wyck Street
Croton-on-Hudson, New York 10520

If to Seagrave:

Acceptable delivery methods shall be: certified mail, return receipt requested; overnight delivery service; or facsimile where proof of successful transmission is received and mailed with the original notice to the Village Manager.

20. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and construed by, under, and pursuant to the law of the State of New York (without regard to the conflict of law provisions.)
21. **Execution.** This Agreement may be executed in counterpart originals, and facsimile and e-mail signatures shall be deemed originals.
22. **Enforcement of Agreement; Waiver.**
 - 22.1. If legal action is commenced to enforce this Agreement, or to remedy any default, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees in addition to any other relief granted. In the event neither party prevails on all counts, the fees and costs shall be equitably allocated between the parties by the court having jurisdiction over the matter.
 - 22.2. The failure of either party to enforce or to exercise at any time, or for any period of time, any term or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other of subsequent default or breach. No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party.
23. **Severability.** If any term of this Agreement is found to be illegal, invalid, or unenforceable under any applicable law and cannot be modified to be enforceable, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall immediately become null and void and shall in no way affect the legality, validity or enforceability of the remaining terms.

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24. **Complete Agreement.** This Agreement contains all of the terms agreed between the parties regarding the subject matter hereof and supersedes any prior agreement, understanding, or arrangement between the parties, whether oral or in writing, in relation thereto, except as otherwise expressly provided herein. This Agreement may not be modified or amended, except in writing signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the day and year first above written.

SEAGRAVE FIRE APPARATUS, LLC

**THE VILLAGE OF
CROTON-ON-HUDSON**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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ACKNOWLEDGEMENTS

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 2011 before me, the undersigned personally appeared Abraham J. Zambrano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within agreement and acknowledged to me that he executed the same in his capacity, and that by his signature on the agreement, the individual, or the person upon behalf of which the individual acted, executed the agreement.

Notary Public

STATE OF WISCONSIN)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 2011 before me, the undersigned personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within agreement and acknowledged to me that he executed the same in his capacity, and that by his signature on the agreement, the individual, or the person upon behalf of which the individual acted, executed the agreement.

Notary Public