

City of Bethel Action Memorandum

Action memorandum No.	19-07		
Date action introduced:	01/08/19	Introduced by:	Peter Williams, City Manager
Date action taken:	January 8, 2019	<input checked="" type="checkbox"/>	Approved <input type="checkbox"/> Denied
Confirmed by:	KM		

Action Title: Authorize the City Manager to negotiate and execute a Purchase Agreement with Kenworth Alaska, Inc., for the purchase of six (6) new water trucks.

Attachment(s): Draft Purchase Agreement

Department/Individual:	Initials:	Remarks:
Peter A. Williams, City Manager	<i>PW</i>	<i>Approved</i>
Bill Arnold, Public Works Director	<i>BA</i>	
Patty Burley, City Attorney	<i>PB</i>	Contract Reviewed, no legal concerns

Amount of fiscal impact:		Account information:
	No fiscal impact at this time.	
	Funds in City Budget.	
\$1,553,916.00	Funds not <u>yet</u> in City Budget.	To be paid by USDA "Avenues" Project loan/grant

Summary Statement

On December 11, 2018, the City Council voted to approve the Avenues project. The project includes the purchase of six (6) new water trucks. Also on December 11, 2018, the City Council approved the use of Kenworth Alaska, Inc., as a single source vendor for the sale and purchase of the water trucks.

The City intends to utilize the funds from the USDA Avenues project to purchase the water trucks. These water trucks will be from the same manufacturer as the recently purchased sewer trucks. This should allow for streamlining of parts inventory and a reduction in time searching for inventory. Additionally, the new fleet will reduce the significant issues the City currently faces with its older fleet and their repeated mechanical failures.



Purchase-Sale Agreement

This Purchase Agreement (this “Agreement”) is entered into this _____ day January 2019 by and between the City of Bethel, a municipal corporation (hereinafter “Buyer”) and KENWORTH TRUCK COMPANY, a division of PACCAR Inc. (hereinafter “Seller”). Buyer and Seller may be referred to in this Agreement individually as a “Party” and/or collectively as the “Parties.”

The Parties agree as follows:

- 1. Purchase and Sale of 2019 T440 Chassis Kenworth T440 Day Cab Water PACCAR PX9 330HP/1250 Trucks.** Seller agrees to sell and Buyer agrees to purchase a total of six (6) trucks as (the property) as described in the attached Schedule “A”. All vehicles sold must be able to be placed on State roads at full weight and be legally compliant with regular weight restrictions imposed by the State of Alaska and the federal Departments of Transportation.
- 2. Purchase Price.** Buyer will pay Seller for the Property and for all obligations specified in this Agreement, if any, as the full and complete purchase price, the sum of One Million, Five Hundred Fifty Three Thousand, Nine Hundred Sixteen (\$1,553,916) Dollars or Two Hundred Fifty Eight Thousand Nine Hundred Eighty Six (\$258,986) Dollars per unit.
- 3. Method of Payment.**
 - a. **Deposit.** Buyer shall deposit Two Hundred Twenty-Five Thousand (\$225,000) total deposit upon the signing of this Agreement.

If Buyer cancels this Agreement at any time after the chassis has (1) entered production at the factory, (2) been purchased by the Seller from another Distributor, or (3) has undergone modification at Seller’s expense, based on a sales order or this Agreement, Seller shall reserve the right, at its sole discretion, to hold the deposit until the chassis is sold in the market or is otherwise satisfactorily disposed of; in which event the Seller will be allowed to retain from the deposit whatever charges it may incur until the chassis is sold and damages it shall have suffered by reason of such cancellation; provided, in the event the charges incurred and damages suffered by Seller exceed the deposit, Buyer agrees to pay Seller the amount of such excess, and in the event there is a balance after said charges and damages, the balance will be remitted to Buyer within ten (10) business days thereafter.

- b. **Final Payment.** Seller shall submit an invoice to Buyer upon delivery of the Property to Bethel. Payment will be processed promptly by Buyer upon receipt of invoice and in no event will payment be issued more than thirty (30) calendar days from receipt of invoice.

All invoices must be submitted in duplicate and addressed as follows:

Public Works Director
City of Bethel Public Works
PO Box 1388

City Manager
City of Bethel Administration
PO Box 1388

Except as provided in this Purchase-Sale Agreement, the Buyer shall not provide any additional compensation, payment, service or other thing of value to Seller in connection with performance of this Agreement. The parties understand and agree that, except as otherwise provided in this Agreement, all costs, whether indirect or direct, incurred by Seller have been built into the Purchase Price.

c. **Taxes.** Seller shall be responsible for payment of all federal, state and local taxes incurred as a result of this Purchase-Sale Agreement.

d. **Delivery of Trucks.**

1. Pre-delivery Services. Prior to final delivery to the Buyer, each vehicle, piece of equipment or attachment shall be serviced and inspected by the Seller or his agent. Inspection must include the following (as applicable to the type of equipment):

- i. Dealer and vehicle identification including Year, Make, Model, complete VIN number and City purchase order number;
- ii. Check-off of service and inspection performed including a list of all fluids including type weight and specification that are in the equipment as delivered for all fluid compartments;
- iii. The vehicle's crankcase, differential and transmission, and other chassis fluid compartments shall be filled to the manufacturer's recommended capacity;
- iv. Fuel tank shall be filled to at least register a minimum of ¼ full on the fuel gauge (unless restricted by the commercial carrier) when the vehicle arrives at the delivery location;
- v. The vehicle shall be clean and free from defects when delivered and should be ready for up-fitting or final delivery of a complete turnkey unit. Any defects or damage will be noted on the receiving report;
- vi. Units delivered in an incomplete state, or which have deficiencies per the specifications, are subject to damage charges as noted in this Agreement.

2. Pre-Delivery Inspection. Seller shall notify Buyer when the trucks are complete and being prepared for shipment. Buyer, at Buyer's sole expense, shall be given the opportunity to fully inspect the vehicles prior to their transport to Alaska Marine Lines (AML) for transport to Bethel, Alaska.

3. Delivery Receipt.

- i. A delivery receipt will be required. The receipt or other receiving report must be filled out by the manufacturer or vendor and acknowledged by receiving personnel by signature and date of actual receipt of equipment.
- ii. Delivery forms shall include, at a minimum, vehicle information and all major components installed (if applicable), Year, Make, Model, VIN, delivery date... Delivery form shall also include an area that indicates all systems have been tested and are in working order.

4. **Delivery Location and Acceptance.** All six (6) trucks purchased by Buyer shall be delivered to Buyer's location in Bethel, Alaska. Until such time as the product arrives in Bethel, Alaska and has been fully inspected and accepted by Buyer, full and complete title to the property shall remain with Seller. Upon transfer of the property, transfer of the title shall vest with Buyer.
5. **Publications.** Paper and or CD, DVD, or USB Flash Drive publications are to be received by the Buyer at time of delivery of each unit. Custom manuals (if required) may be delivered no later than thirty (30) calendar days after receipt of the unit. Delivery will not be considered complete until the publications for each unit have been received by the Buyer.
 - i. All paper manuals, if ordered, are to be pre-assembled in factory binders prior to delivery.
 - ii. CD, DVD, or USB Flash Drives are to be with the unit at time of delivery.
6. **Service Manuals.** Complete set(s) to include applicable information covering:
 - i. Prime unit (chassis) and attachments;
 - ii. Body, chassis, and electrical;
 - iii. Engine, transmission and differential(s) [service and rebuild];
 - iv. Electrical and vacuum troubleshooting;
 - v. Wiring diagrams;
 - vi. Service specifications;
 - vii. Engine/emission diagnosis
7. **Parts Manuals.** Complete set(s) including all updates. If updates are not provided during the warranty period, the Buyer may order them from the Seller.
8. **Operator's Manuals.** Complete set(s) to include prime unit and attachments.
- e. **Reliability of Equipment.** Reliability is of paramount importance to the City (buyer).
- f. **Warranty.** Seller shall provide the following minimum warranties:
 - a. Full (100%) parts and labor warranty coverage for all components for 12 months from the date the unit is placed in service;
 - b. Full (100%) warranty coverage, including all cost of labor, parts, freight, lubricants, miscellaneous cost, etc., to place the unit in like-new condition.
 - c. Frame warranty: 36 months/300,000 miles
 - d. Cab warranty: 24 months/200,000 miles
 - e. Suspension warranty: 12 months/100,000 miles
 - f. Engine warranty: 60 months/150,000 miles
 - g. Transmission warranty: 36 months
 - h. DPF System warranty: 24 months
 - i. Emissions System warranty: 60 months/100,000 miles
 - j. After-treatment warranty: 60 months/150,000 miles

- k. **Replacement Parts.** The Buyer shall expect the Seller to provide replacement wear parts at their authorized warranty facilities for the entire warranty period on any given unit.

Should the manufacturer's standard warranty exceed the minimum warranty requirements, the manufacturer's warranty will run in conjunction with and enhance the required minimum warranty, then continue for the remainder of its term.

Seller warrants that all products sold conform to State of Alaska and federal Departments of Transportation weight limit restrictions when fully loaded to designated fill capacities. Should, after acceptance, any vehicle be found to not meet the standards, as determined by either a State or federal DOT inspector, Seller will reconfigure or correct the nonconformance at Seller's sole cost and expense.

For clarification, warranty does not apply to normal wear and tear or maintenance items, accident damages, misuse of equipment or failure to operate or maintain equipment as prescribed by Seller.

- g. **Warranty Claims.** Warranty will be provided at Buyer's location. Because of the remote location of the equipment, it is not always practical to deliver equipment to authorized warranty repair facilities. In these cases, the Seller may perform warranty work at the Buyer's location.
- h. **Insurance.** Seller shall provide proof of insurance (per a Certificate of Insurance) that Seller has and maintains, Commercial General Liability Insurance, Commercial Auto Liability and Worker's Compensation/Employer's Liability in the minimums set forth below:

Commercial General Liability Insurance: Form CG0001 04/13 or equivalent.

\$1,000,000.00 Combined Single Limit of Liability per Occurrence

\$2,000,000.00 Annual General Aggregate Limit of Liability

\$2,000,000.00 Annual Products/Completed Operations Aggregate Limit of Liability

Commercial Auto Liability

\$1,000,000 Combined Single Limit of Liability per Accident for all owned, hired and non-owned vehicles

Worker's Compensation/Employer's Liability

Statutory requirements and Employer Liability Insurance Limits of at least:

\$500,000 Each accident

\$500,000 Disease, each employee

\$500,000 Disease policy limit.

- i. **Seller's Representations.** Seller represents and warrants that he/she has good and marketable title to the Property and full authority to sell the Property. Seller also represents that the Property is sold free and clear of all liens, indebtedness, or liabilities.
- j. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

- k. **Modification.** The Parties may mutually agree to modify the terms of this Agreement. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- l. **Disputes.** In an effort to resolve any conflicts that arise between the Parties under this Agreement, the Buyer and Seller agree that all disputes between them arising out of or relating to this Agreement shall be submitted first to nonbinding mediation.
- m. **Severability.** If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.
- n. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Buyer and Seller and their respective successors and assigns.
- o. **Headings.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.
- p. **Entire Agreement.** This Agreement shall be the exclusive agreement between the Parties and supersedes any and all prior oral or written agreements or understandings between the Parties concerning the subject matter of this Agreement.
- q. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
- r. **Facsimile Signatures.** The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

KENWORTH NORTHWEST, INC.
SELLER

CITY OF BETHEL
BUYER

By: Keith Shalsky
Title: Territory Manager

By: Peter A. Williams
City Manager