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9 UNITED STATES BANKRUPTCY COURT  
 10 EASTERN DISTRICT OF CALIFORNIA  
 11 SACRAMENTO DIVISION

13 In re:  
 14 CITY OF STOCKTON, CALIFORNIA,  
 15 Debtor.

Case No. 2012-32118  
 D.C. No. OHS-6  
 Chapter 9

16 **CITY OF STOCKTON'S MOTION**  
 17 **FOR ORDER APPROVING ITS**  
 18 **ASSUMPTION OF THE MASTER**  
 19 **LEASE – PURCHASE AGREEMENT,**  
 20 **AS AMENDED, WITH PIERCE**  
 21 **MANUFACTURING, INC., RELATING**  
 22 **TO FOUR FIRE PUMPER TRUCKS**

Date: January 30, 2013  
 Time: 10:00 a.m.  
 Dept: C, Courtroom 35  
 Judge: Hon. Christopher Klein

23 The City of Stockton, California, (the “City”), respectfully moves this Court for an order  
 24 pursuant to 11 U.S.C. §§ 365(a) and (b) approving City’s assumption of the Master Lease –  
 25 Purchase Agreement, as amended by the Amendment to the Master Lease – Purchase Agreement  
 26 Between Pierce Manufacturing, Inc., and City of Stockton (collectively, the “Agreement”). The  
 27 Agreement is between the City and Pierce Manufacturing, Inc. (“Pierce”). A true and correct  
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1 copy of the Agreement is attached as Exhibit A to the Declaration of S. Jeff Piechura in Support  
2 of City of Stockton's Motion for Order Approving its Assumption of the Master Lease – Purchase  
3 Agreement, as Amended, with Pierce Manufacturing, Inc., with Respect to Four Fire Pumper  
4 Trucks ("Piechura Decl."). As noted in Recital 6 of the Agreement, Pierce consents to the  
5 assumption thereof.

6 **I. BACKGROUND**

7 Of the City's fleet of 16 fire engines, eight are beyond their useful life, with each of the  
8 eight having over 20 years of front-line service. This poses a risk to the safety of the City, its  
9 citizens and to the firefighters who use the trucks. Piechura Decl. ¶ 4. The fleet is so old and  
10 many of the trucks in such condition that often a mechanic follows the Fire Department in a  
11 separate vehicle when its trucks respond to fire alarms and other emergency calls. Piechura Decl.  
12 ¶ 4. To begin to address this deficiency, the City's 2011-12 adopted budget for the Fleet Internal  
13 Service Fund included appropriations that provided \$1,000,000 for the replacement of two fire  
14 pumpers. Due to the severe age of the existing apparatus, the City anticipated the lease or  
15 purchase of an additional two fire pumpers for another \$1,000,000 during the 2012-13 fiscal year.  
16 Piechura Decl. ¶ 5.

17 The City and Oshkosh Capital (the assignor to Pierce) entered into a Master Lease –  
18 Purchase Agreement, dated as of February 10, 2012 ("Original Agreement"). The Original  
19 Agreement was approved by the City Council on January 24, 2012. Piechura Decl. ¶ 3. The  
20 Original Agreement provided for the acquisition of four, custom-built pumper trucks (the four  
21 collectively, the "Trucks"). The Trucks were to be manufactured by Pierce under a separate  
22 agreement with the City, according to the City's unique specifications and subject to financing for  
23 the purchase price of the Trucks. Production of the Trucks did not commence, and Pierce refused  
24 to commence manufacture of the Trucks absent financing for the acquisition which was not  
25 available as originally contemplated in light of the City's financial condition and its consequent  
26 chapter 9 filing. The City believes that it could not assume the Original Agreement without  
27 Pierce's consent due to Bankruptcy Code § 365(c)(2). The City and Pierce then entered into  
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1 negotiations that resulted in the Agreement, the financial terms of which are nearly identical to  
2 those of the Original Agreement, save for later delivery dates. Piechura Decl. ¶ 3. Pierce will not  
3 complete manufacture and delivery of the Trucks except on the financing terms as set forth in the  
4 Agreement.

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

8 **II. THE AGREEMENT**

9 Pierce will manufacture and lease to the City four 2013 Pierce Quantum 1500 GPM  
10 Pumper trucks (i.e, the Trucks), with initial delivery anticipated to occur on or about March 15,  
11 2013, for a total financed amount of \$1,871,403.70 (including sales tax). The dates of the rent  
12 payments are listed in Exhibit 1 to the Agreement (which constitutes a revised Schedule A-1).  
13 Pursuant to paragraph 4 of the Agreement, in the event that the City defaults under the  
14 Agreement, Pierce may exercise its contractual remedies against the City without the need for  
15 relief from the automatic stay. The City agreed to such provision (which is customary in the case  
16 of such equipment financings) in light of its budgeted funding for the four trucks and in light of  
17 its desperate need for the Trucks to upgrade its aging fleet.

18 **III. RELIEF REQUESTED**

19 The City requests that the Court authorize the assumption of the Agreement pursuant to 11  
20 U.S.C. §§ 365(a) and (b).<sup>1</sup> To the extent that the City has defaulted under the Original  
21 Agreement, Pierce agrees that the conditions of Bankruptcy Code § 365(b) have been satisfied.

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26 <sup>1</sup> Arguably, no approval is necessary because the Agreement could be viewed as a new agreement for the acquisition  
27 of the fire pumper trucks. In that case, because Bankruptcy Code § 363 does not apply in chapter 9 cases, no  
28 “assumption” under § 365, which does apply in chapter 9 cases, would be required. However, in an abundance of  
caution, the City is seeking this Court’s approval. Pursuant to Bankruptcy Code § 904, to the extent applicable, the  
City consents to the Court’s determining this Motion.

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**IV. CONCLUSION**

The City desperately needs the Trucks. The City has budgeted for the acquisition of the Trucks. Pierce consents to the assumption of the Agreement. The City therefore requests that the Court enter an order approving the City’s entry into the Agreement and authorizing the assumption thereof.

Dated: January 16, 2013

ORRICK, HERRINGTON & SUTCLIFFE LLP

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