

**ORDINANCE NO. 06-78 AC CMS**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
CONTRACT WITH HEAVY LIFT SYSTEMS, INC.  
OF AKRON, OHIO, THROUGH THE STATE OFFICE OF PURCHASING  
FOR THE PURCHASE OF A PARALLELOGRAM LIFT AND RELATED EQUIPMENT  
FOR THE PUBLIC WORKS DEPARTMENT AND DECLARING AN EMERGENCY**

**BE IT ORDAINED** by the Council of the City of Oberlin, County of Lorain,  
State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

**SECTION 1.** That pursuant to Ohio Revised Code Section 125.04 and City of Oberlin Resolution No. R88-7, the City Manager is hereby authorized and directed to enter into a contract with Heavy Lift Systems, Inc., of Akron, Ohio, through the State Office of Purchasing for the purchase of a parallelogram lift and related equipment for the Public Works Department for a purchase price of \$95,260.

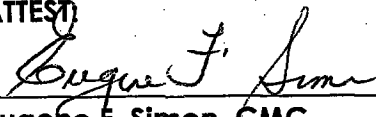
**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

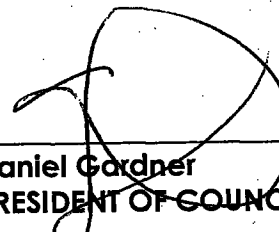
**SECTION 3.** That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit:

**"to authorize the purchase of equipment necessary for the Public Works Department as soon as possible to ensure the efficient operation of the City of Oberlin," and shall take effect immediately upon passage.**

**PASSED:** 1<sup>st</sup> Reading – September 18, 2006 (E)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

**ATTEST:**

  
Eugene F. Simon, CMC  
CLERK OF COUNCIL

  
Daniel Gardner  
PRESIDENT OF COUNCIL

**POSTED:** 9/19/2006

**EFFECTIVE DATE:** 9/19/2006  
a:/ORD06-78.PWD.ParallelogramLift

# AGREEMENT

ORIGINAL

This Agreement, made this 19th day of September, by and between the City of Oberlin, Ohio, hereinafter called the "City" as authorized by Ordinance 06-78 AC CMS, and Heavy Lift Systems, Inc. of Akron, OH, hereinafter called "Contractor".

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the parties hereto do mutually agree as follows:

**SECTION 1. Scope of Services.** The Contractor will furnish all necessary labor, equipment and material as described in state purchase contract Ohio STS #779491 and as further described in the proposal dated March 24, 2006 to provide and install a Stertil-KONI/Omer Vega 340-CB-30 drive through Parallelogram Lift, hereinafter called "Equipment". Additionally, at no extra cost:

1. The Contractor shall coordinate its work with the City, the City's Architect, the General Trades, Electrical and Plumbing contractors as may be necessary to insure a complete and fully functional installation of the Equipment.
2. The Contractor shall furnish a complete list of shop and parts manuals for the Equipment furnished under this Agreement.
3. The Contractor shall provide such reasonable and customary training as deemed necessary by the City to ensure the safe and efficient use of the Equipment.

**SECTION 2. Standard of Care.** The Contractor shall furnish all goods, services and labor which expeditiously, economically and properly complete its scope of the work in the manner most consistent with the City's interests and objectives and in accordance with the highest standards currently practiced by persons and entities performing comparable labor and services on projects of similar size and complexity.

**SECTION 3. Payment to Contractor.** The City shall pay to the Contractor the maximum sum of Ninety-Five Thousand, Two Hundred and Sixty and 00/100 Dollars (\$95,260.00). Funds due and payable shall be disbursed by the City based on invoice(s) provided by the Contractor. 100% of the value of the contract shall be due and payable at the time of final acceptance of the Equipment by the City or as otherwise mutually agreed to by the parties. The City shall disburse funds within 30 days of the approval of the invoice(s).

Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor shall furnish the City, in the form and manner required by City, if any, with a copy to the Public Works Director:

1. An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
2. If required by the City, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the City or the City's property;

**SECTION 4. Services provided by the City.** The City shall provide all necessary drawings and specifications related to the construction of the facility in which the Equipment is to be installed. The City shall assist the Contractor in the coordination and proper completion of the Contractor's work with the City's Architect, the General Trades, Electrical and Plumbing contractors. The City shall review and approve or return for modification, where required, all drawings, specifications, requests for information pertaining to the Equipment. The City shall designate a person who will act as its representative in regard to the work to be performed under the Agreement.

**SECTION 5. Schedule.** Delivery of the Equipment shall be within 120 days of the date of receipt of the approved requisition order. Installation of the Equipment shall be scheduled with the City's representative and with the General Contractor.

**SECTION 6. Warranty.** The Contractor expressly warrants and guarantees to the City that all goods, products, materials, equipment, and systems incorporated in its particular scope of the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples; be new (unless otherwise specified or permitted) and without apparent damage; be of quality equal to or higher than that required by the Ohio – STS #779491A and the proposal dated March 24, 2006; be merchantable; and free from defects.

The Contractor expressly warrants and guarantees to the City that all labor and services required for its particular scope of Work shall comply with the Bid Documents; be performed in a workmanlike manner; and be free from defects.

All warranties and guarantees set forth above shall be in addition to all other warranties, express, implied or statutory, and shall survive payment for, acceptance or inspection of, or failure to inspect the Work.

The following warranty period(s) apply specifically to the Equipment and its installation:

One (1) Year Parts and Labor

**SECTION 7. Amendments.** All amendments to this Agreement shall be in writing and signed by all parties.

#### **SECTION 8. Safety**

The Contractor is solely responsible for its construction means, methods, techniques, sequences, and procedures, including all safety precautions and programs in connection with the job or the work of any of its subcontractor, suppliers or their agents or employees, or any other person performing work or services on the job or at the site in the fulfillment of the requirements of this Agreement. The Contractor shall provide and maintain safeguards, safety devices and protective equipment and take any other needed actions as may be necessary to protect the public and property in connection with the work. The contractor shall conduct the work in accordance with applicable OSHA requirements.

**SECTION 9. Insurance.** Contractor shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the work being performed and the Equipment furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other

obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

1. The comprehensive general liability insurance required will include contractual liability insurance applicable to Contractor's obligations with limits of at least One Million Dollars (\$1,000,000).
2. Claims under worker's or workmen's compensation, disability benefits and other similar employee benefit acts;
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees or any person other than Contractor's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
6. Claims arising out of operation of Laws and Regulations for damages because of bodily injury or death of any person or for damage to property; and
7. Claims for damages because of bodily injury or death of any person or property damage arising out of the use of any equipment, motor vehicle or vehicle regardless if owned or not.
8. The insurance required by this Section shall be underwritten by a company or companies lawfully authorized to do business in the State of Ohio with a Best's rating of no less than A-. Insurance required by this section will include the specific overages and be written with limits of liability not less than One Million Dollars (\$1,000,000.00). The comprehensive general liability insurance shall include premises operations, products and completed operations, and broad form property damage insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to City by certified mail. All such insurance shall remain in effect during the term of the contract.

#### **SECTION 10. Indemnification**

The Contractor agrees to indemnify, defend and hold harmless the City of Oberlin against any and all claims of liability, loss, damage or costs arising from any act or omission by the Contractor or its officers, agents and employees in the performance of this Agreement.

#### **SECTION 11. Successors and Assigns.**


This Agreement shall be binding upon and inure to the benefit of the City of Oberlin and Heavy Lift Systems, Inc. When used in the Agreement, the terms City and Contractor shall include any successors and permitted assigns, or any permitted entity designated by either party to carry out the obligations of that party regarding this Agreement.

**SECTION 12. Termination by the City.** If the Contractor does not perform the work, or, any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material


provision of this Contract, then the City, in addition to any other rights it may have against the Contractor or others, may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the City of completing the work, including all costs and expenses of every nature incurred, has been deducted by the City, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the City for such cost. This obligation for payment shall survive the termination of the Contract.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies, each of which shall be deemed an original on the date first written above.

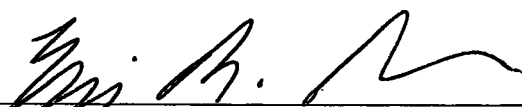
City of Oberlin, Ohio

By:   
Robert DiSpirito, City Manager

**Heavy Lift Systems, Inc.**  
**1244 Merriman Rd.**  
**Akron, OH 44313-5947**

By:   
Mark Friess, President

Approved as to form:

  
Eric R. Severs  
Law Director