

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 18-247-R

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between DPF Services LLC ("Contractor"), a Virginia Limited Liability Company authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration and quantity(ies) specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and Attachment A (The City of Fairfax Council, Virginia Contract No. 17036, incorporated herein by reference) (collectively, "Contract Documents" or "Contract").

This Agreement rides a competitive procurement process conducted by The City of Fairfax Council, Virginia, Agreement #17036 for the provision of OEM parts and repair services for heavy duty trucks and freightliners and the Metropolitan Washington Council of Governments rider clause. The Contractor desires to extend to the County the same pricing as the Contractor's agreement with The City of Fairfax Council, Virginia.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

2. CONTRACT TERM

The Contractor's provision of goods for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than June 30, 2021 ("Contract Term"), subject to any modifications as provided for in the Contract Documents.

3. CONTRACT PRICING

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Attachment A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County.

4. SCOPE OF WORK

The Contractor agrees to provide the goods described in the Contract Documents. The primary purpose of the Work is to provide OEM parts and repair services for heavy-duty trucks and freightliners.

The Contract Documents set forth the minimum work estimated by the County and the Contractor to be necessary to complete the work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work.

5. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer ("Project Officer"), who shall be appointed by the Director of the Arlington County department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

6. PAYMENT TERMS

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose

of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County's written notice.

9. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and sole expense.

10. DELIVERY

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

11. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the

foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

16. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or

subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

17. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

18. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

19. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about

a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

20. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

21. COUNTY EMPLOYEES

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

22. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

23. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

24. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

25. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

26. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

27. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

28. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

29. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

30. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

31. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

32. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

33. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

34. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

35. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

36. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

37. SURVIVAL OF TERMS

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

38. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

39. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

40. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Richard Rehberg
DPF Services LLC
12605 Mill Road
Fredericksburg, VA 22407

TO THE COUNTY:

Carmen Wooden, Project Officer
Arlington County, Virginia
2701 S. Taylor Street
Arlington, Virginia 22206

AND

Sharon T. Lewis, Purchasing Division Chief
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

41. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

42. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- e. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- f. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- g. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission,

commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

43. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

DPF SERVICES LLC

AUTHORIZED SIGNATURE: Sharon Lewis

AUTHORIZED SIGNATURE: [Handwritten Signature]

NAME AND TITLE: SHARON T. LEWIS
PURCHASING DIVISION CHIEF

NAME AND TITLE: Richard A. Rehberg, Owner

DATE: 09/04/2048

DATE: 9/4/18



OFFER AND ACCEPTANCE AGREEMENT

Agreement for provision of **PROVISION OF OEM PARTS AND REPAIR SERVICES FOR HEAVY-DUTY TRUCKS AND FREIGHTLINERS ON AS NEED BASIS AND AS REQUESTED BY THE CITY FOR UP TO FIVE (5) YEAR PERIOD.**

Contract No. **17036**

This Agreement made and entered into this the 12th day of October, 2017, by and between the City of Fairfax Council, Virginia entity and/or political subdivision of the Commonwealth of Virginia with offices located at 14055 Armstrong Street, Fairfax, Virginia 22030 (hereinafter referred to as the "City")

And

Name of Contractor DPF Service LLC of Commonwealth of Virginia who is authorized to do business in the Commonwealth of Virginia with principal office located at: 11812 Main St Unit C-112 Fredericksburg VA 22408 (hereinafter referred to as the "Contractor"). Witnesseth that: Whereas, the City did advertise and issue this Invitation for Bid (IFB) for supplying the requirement of the City for the items and /or services listed above for the period of five (5) years and the Contractor submitted a bid which was accepted and approved by the City.

Now, therefore, for and in consideration of the premises and the mutual covenants herein contained, the parties covenant and agree as follows:

1. The Contractor agrees to sell to the City and the City agrees to buy from the Contractor, upon execution of this Agreement by the City and ending at **June 30, 2021** for the requirement listed in this in this Informal Solicitation No. **17036** and according to the specifications, terms, covenants and conditions of Informal Solicitation No. **17036**.
2. **Contract Documents:** The Contract Documents consist of this Informal Solicitation No. **17036** including all properly included addenda and attachments and the Contractor's bid in response to City's Informal Solicitation No. **17036**. Where the terms and provisions of this Agreement vary

from the terms and provisions of the other Contract Documents, the terms and provisions of City's Informal Solicitation No. **17036** shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Agreement between the City and the Contractor. The City and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' Agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein as the "Contract" or "Agreement"

3. **Warranty:** The Contractor by executing this Agreement embodying the terms herein warrants that the products and/or services that is supplied to the City shall remain fully in accord with the specification and be of the highest quality. In the event any products and or/or services as supplied to the City is found to be defective or does not conform to the specifications the City reserves the right to cancel that order upon written notice to the Contractor and to adjust billing accordingly.
4. **Tax Exempt:** City's State Sales (#A-212973) and Federal Excise (# 54-6001266). Taxes are normally, exempt; however, certain transaction are maybe taxable. Consult your tax practitioner for guidance where necessary.
5. **Invoicing:** The Contractor shall forward all invoices and supporting documentation for the invoices to the following:
6. **Contract Summary**
 - a. Attachments, if any: Informal Solicitation No. **17036**
 - b. Payment Terms: **Net thirty (30) days.**
 - c. Delivery Address: **As noted in Informal Solicitation No. 17036**
 - d. Contract Pricing (Select the appropriate option): Fixed Adjustable _____
 - e. Provide information, if adjustable: _____

7. Contractor's Contact Information:

Contact Person's (i.e. Contract Manager) Richard Rehberg 540-412-5611

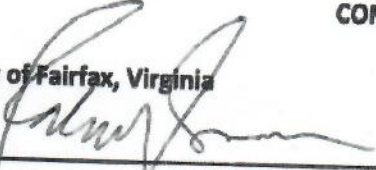
8. Signatures:

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first aforesaid.

CONSENTED and AGREED TO BY:

City of Fairfax, Virginia

By:


Robert Sisson, City Manager

10/18/17
Date

Approved as per Form


City Attorney

Date: 10/17/2017

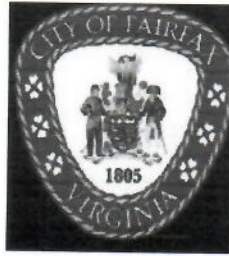
DPF Service LLC

By:


Signature of Authorized Agent or Principal

Name of Authorized Agent or Principal

Date: October 12, 2017



**CITY OF FAIRFAX, VIRGINIA
FAIRFAX CITY HALL, FINANCE DEPARTMENT
SUITE 312, 10455 ARMSTRONG STREET
FAIRFAX, VA 22030
(703) 385-7875**

INVITATION FOR BID NO. 17036

SEALED BIDS WILL BE RECEIVED IN HAND IN THE FINANCE OFFICE, SUITE 312, 10455 ARMSTRONG STREET, FAIRFAX, VIRGINIA 22030, UNTIL **3:00 P.M. ON THE 16TH DAY OF JUNE, 2017** FOR:

PROVISION OF OEM PARTS AND REPAIR SERVICES FOR HEAVY-DUTY TRUCKS AND FREIGHTLINERS ON AS NEED BASIS AND AS REQUESTED BY THE CITY FOR UP TO FIVE (5) YEAR PERIOD.

AT THE TIME, DATE AND PLACE STATED ABOVE, BIDS WILL BE PUBLICLY OPENED.

IMPORTANT NOTES:

- City of Fairfax reserves the right to reject any and all applications, cancel this solicitation, and to waive any informalities or irregularities in procedure.
- In accordance with Code of Virginia § 2.2-4343.1, City of Fairfax does not discriminate against individuals or organizations in the performance of its procurement activity.
- Late, unsealed, and electronic applications will not be accepted.

**CITY OF FAIRFAX, VIRGINIA
FINANCE DEPARTMENT**

Maryam N. Zahory, CPPO, CPPB
Maryam.zahory@fairfaxva.gov
Buyer

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PART ONE - INSTRUCTIONS TO BIDDERS

1. **DISTRIBUTION OF SOLICITATION DOCUMENTS**

The distribution of this solicitation, all addenda, and responses to questions will be by posting on the City of Fairfax, Virginia (the "City") website <http://www.fairfaxva.gov/government/finance/procurement>, and the Commonwealth of Virginia website <http://www.eva.virginia.gov/pages/eva-i-buy-for-virginia.htm> and publication of a notice in a local newspaper of general circulation. The date and time of posting on the City website shall be the date and time of the official issuance or notification of the IFB or any modification to the solicitation process. It is the responsibility of each bidder to check the City website daily for posted notifications. The City will not consider modification of any date, time frame, or addendum due to late receipt of notification based on subsequent advertisements or posting at any location other than the City website.

2. **DEFECTIVE SOLICITATION DOCUMENTS**

Each bidder is responsible for having determined the accuracy and /or completeness of the solicitation documents upon which it relied in making its proposal, and has an affirmative obligation to notify the City Buyer immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, sections, amendments whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential bidder downloaded an electronic version of the solicitation documents, that potential bidder is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful bidder proceeds with any activity that may be defected by an inaccuracy, error in, or omission in the solicitation documents of which is aware but has not notified the City Buyer, the bidder hereby agrees to perform any work described in such missing or incomplete documents at the bidder's sole expense and at no additional cost to the City.

Failure to acknowledge all addendums issued during the solicitation process on the receipt of addenda form is considered an incomplete bid document.

3. **ADDITIONAL INFORMATION**

All questions relating to this solicitation shall be submitted via email to **Maryam Zahory** in the Finance Department, at maryam.zahory@fairfaxva.gov. For a question to be considered, the subject line of the e-mail must state the following: **IFB No. 17036 Questions**. Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a contract resulting from this solicitation, bidders are prohibited from contacting City staff other than the Finance Department.

NO QUESTIONS WILL BE CONSIDERED IF THEY ARE SUBMITTED AFTER MAY 24, 2017 AT 5:00 PM.

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal amendment only. Bidders are cautioned that any written, electronic, or oral representations made by any City representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the Finance Department.

4. **COMPETITION INTENDED**

City of Fairfax intends to promote competition for this solicitation, it shall be the bidder's

responsibility to advise the City if any language, requirements or specifications have the effect of restricting or limiting the purchase to a single source. Such notification must be received by the City Buyer not later than fifteen (15) calendar days prior to the date and time set for bid opening. A review of such notifications will be made and the bidder notified of the results of the review.

5. BID FORM SUBMISSION

The required Bid Form is provided in the solicitation. One (1) fully-completed Bid Form with an original longhand signature, and a photocopy of the signed original (two (2) copies total), shall be submitted by hand, in a sealed envelope or package, to the Finance Department, Suite 312, 10455 Armstrong Street, Fairfax, Virginia, 22031, no later than the date and time deadline specified in the Invitation for Bid above. Timely submission is solely the responsibility of the bidder. Bid Forms received after the specified date and time will be rejected. The exterior of the envelope or package shall indicate the name of the bidder, the scheduled bid opening date and time, and the number of the Invitation for Bid. Bids submitted by facsimile or electronically will not be accepted.

A bidder's failure to submit a bid with a fully-completed Bid Form, using the Bid Form provided in this solicitation, shall be cause for rejection of that bidder's bid. A bid will be rejected if its corresponding Bid Form is not signed in the designated space by a person authorized to legally bind the bidder.

Modification of or additions the Bid Form may be cause for rejection of the bid; however, City of Fairfax reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a bid as nonresponsive. As a precondition to bid acceptance, City of Fairfax may, in its sole discretion, request that the bidder withdraw or modify any such modifications or additions which do not affect quality, quantity, price, or delivery.

Bids and all documents related to this solicitation submitted to City of Fairfax by a bidder or a prospective bidder shall, upon receipt by the City will become City property.

6. BIDDER CERTIFICATION

Submission of a signed Bid Form is certification by the respective bidder that it is registered with the Virginia State Corporation Commission, if applicable, it is a legal entity authorized to enter into an agreement with the City, and that it will accept any award made to it as a result of the submission.

7. NEGOTIATION WITH THE LOWEST RESPONSIBLE BIDDER

Unless all bids are cancelled or rejected, the City reserves the right granted by §2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the bid price and the specification/scope of work to be performed.

8. EXCEPTIONS

Bidders taking exception to any part or section or term of this solicitation, including, by way of illustration and not limitation, the Specifications, the Special Conditions, and any attachments or references hereto or thereto, shall indicate such exceptions on the Bid Form. Failure to indicate any exceptions, shall be interpreted as the bidder's intent to fully comply with the solicitation as written. However, conditional or qualified bids with such exceptions, unless specifically allowed in this solicitation, are subject to rejection in whole or in part as nonresponsive.

9. NONCONFORMING TERMS AND CONDITIONS

If a bidder submits with its bid alternate terms and conditions that do not conform to the terms

and conditions in this solicitation, the bid will be subject to rejection for unresponsiveness. City of Fairfax reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to a determination by the City of unresponsiveness as a result of the submission of nonconforming terms and conditions.

10. ERRORS IN EXTENSION

Where the unit price and the extension price are at variance, the unit price will prevail.

11. USE OF BRAND NAMES

Unless identified as a "No Substitute" item in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to that specific brand, make or manufacturer. The use of the brand, make or manufacturer's identification is intended to convey the general type, style, character, and quality of the article described. Any article which the City in its sole discretion determines to be the equivalent of the article specified, considering quality, workmanship, economy of operation, and/or suitability for the intended use, may be accepted and considered for award. It is the bidder's sole responsibility to only use substitutes that meet the above criteria.

12. DISCOUNTS

Discounts contingent on payment of invoices by City of Fairfax within a stipulated period of time will be accepted as a component of a bid, but will not be considered by City of Fairfax when evaluating bid prices or when making an award.

13. EXPENSES INCURRED IN PREPARING BID

City of Fairfax accepts no responsibility for any expense incurred by any bidder in the preparation and presentation of a bid. All expenses related to a bid are the sole responsibility of the bidder.

14. SAMPLES

Bidders shall submit any samples required in this solicitation in accordance with instructions hereunder. Samples will not be returned. However, if a bidder requires that a sample(s) be returned the bidder must submit a request in writing within fourteen (14) calendar days after bid opening. The bidder shall arrange to retrieve the samples at their sole expense at a location and in a manner identified by the City of Fairfax. Samples not retrieved in accordance with these terms will be disposed of at the discretion of City of Fairfax not sooner than thirty (30) calendar days after City of Fairfax staff notify the bidder of the availability of samples for return. Testing of samples may include disassembly or destruction. City of Fairfax shall not be responsible for any loss or damage or diminution of value in the samples while in the possession of the City.

15. BIDDER INVESTIGATIONS

Before submitting a bid, each bidder must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful bidder.

16. QUALIFICATION OF BIDDERS

Each bidder may be required, before the award of contract, to show to the complete satisfaction of the City of Fairfax Buyer that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material, or goods specified herein in a

satisfactory manner. Each bidder may also be required to provide past history and references which will enable the Buyer to be satisfied as to the bidder's qualifications. Failure to qualify according to the foregoing requirements will justify bid rejection by the City of Fairfax.

17. DEBARMENT STATUS

The bidder shall indicate, in the space provided on the Bid Form, whether or not it, or any of its principals, is/are currently debarred from submitting bids to City of Fairfax, Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting bids to City of Fairfax, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the bid.

18. ALTERNATE BID

Bidders who have other items they wish to offer in lieu of or in addition to what is required by this solicitation shall submit a separate bid clearly marked "ALTERNATE BID". Alternate bids will be automatically deemed nonresponsive and will not be considered for award. Such bids will, however, be examined prior to awarding the contract contemplated herein and may result in either cancellation of all bids in order to permit rewriting of the solicitation to include the alternate item in a rebid or the alternate item may be considered for future requirements.

19. NEW MATERIAL

Unless otherwise provided for in this solicitation, the bidder represents and warrants that the goods, materials, supplies, or components offered to City of Fairfax under this solicitation and any resulting contract are new, not used or reconditioned, and are not of such age or deterioration as to impair their usefulness or safety, and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If the bidder believes that furnishing used or reconditioned goods, materials, supplies or components will be in City of Fairfax's interest, the bidder shall notify the City in writing no later than ten (10) business days prior to the date set for opening of bids. The notice shall include the reasons for the request and any benefits which may accrue to City of Fairfax if the City authorizes the bidding of used or reconditioned goods, materials, supplies or components.

20. INFORMALITIES

City of Fairfax reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a bid insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the goods, services and/or construction being procured. If insufficient information is submitted for City of Fairfax to properly evaluate the bid by a bidder, City of Fairfax reserves the right to require such additional information as it may deem necessary after the bid opening time and date, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

21. CITY OF FAIRFAX BUSINESS LICENS

Bidders must comply with the City of Fairfax business license requirements, if applicable. For information on the applicability of this requirement, contact the City of Fairfax Commissioner of Revenue Office, Suite 234, 10455 Armstrong Street, Fairfax, Virginia 22030; telephone number (703) 385-7905.

22. AUTHORITY TO TRANSACT BUSINESS

Any bidder organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the bidder by the Virginia State Corporation Commission must be written in the space provided on

the Bid Form. Any bidder that is not required to be authorized to transact business in the Commonwealth shall include in its bid a statement describing why the bidder is not required to be so authorized. The City may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in Virginia. Failure of a prospective and/or successful bidder to provide such documentation shall be grounds for rejection of the bid or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

23. BID WITHDRAWAL PRIOR TO BID OPENING

No bid may be withdrawn after it is filed with the Bid Clerk unless the bidder makes a request in writing to the City of Fairfax City prior to the time set for the opening of bids.

24. WITHDRAWAL OF BID FROM CONSIDERATION AFTER BID OPENING

After the opening of a bid, a bidder may withdraw its bid from consideration if the price of the bid is substantially lower than other bids due solely to a mistake therein, provided the bid is submitted in good faith, the mistake is a clerical mistake as opposed to a judgment mistake, and is actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. No partial withdrawals of bids will be permitted after the time and date set for bid opening. The bidder must give notice in writing to the City of Fairfax City of a claim of right to withdraw a bid and provide all original work papers, documents and other materials used in the preparation of the bid sought to be withdrawn, within two (2) business days after the date of bid opening. A bid may also be withdrawn if City of Fairfax fails to award or issue a notice of intent to award the bid within ninety (90) days after the date fixed for opening bids.

25. PARKING

At most City of Fairfax government facilities, parking for contractors' vehicles is not provided by City of Fairfax. A contractor is responsible for the payment of any parking charges or fines resulting from illegal parking at any worksite(s).

26. REQUIREMENTS CONTRACT ACKNOWLEDGEMENT

Bidders acknowledge that the contract that will be entered into as a result of this solicitation will be a requirements contract. City of Fairfax will have no obligation to the successful bidder if no items or services or goods are required. Any quantities which are included in this solicitation are the present expectations of those who are planning for City of Fairfax for the period of the contract. The amount is only an estimate and each bidder understands and agrees that City of Fairfax is under no obligation to the successful bidder to buy any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. Each bidder further understands that City of Fairfax may require items, services, or goods in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices in the contract.

27. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder or contractor in connection with a procurement transaction or prequalification application submitted pursuant to § 2.2-3705.6. (Exclusions to application of chapter; proprietary records and trade secrets) may be exempted from public disclosure under the Virginia Freedom of Information Act "(VFOIA)". However, the bidder or contractor must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing, in the spaces provided on the Bid Form, the data or other materials sought to be protected and the reasons why

protection is necessary or falls within the exceptions to the VFOIA. It is the bidder's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

28. INTEREST IN MORE THAN ONE BID AND COLLUSION

Multiple bids received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one (1) bid for a solicitation both as a bidder and as a subcontractor for another bidder will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

29. METHOD OF AWARD

City of Fairfax reserves the right to make the award on an aggregate or on a unit basis, whichever is considered by the City, in his sole discretion, to be in the best interests of City of Fairfax. Bids identified by the bidder as being submitted in the aggregate or on an "all or none" basis will not be considered for award if the City determines that it is in City of Fairfax's best interest to make a split award.

30. CONDITIONS OF THE RIDER CLAUSE

The successful bidder will have the option to extend any contract resulting from this solicitation to all or some of the member jurisdictions of the Metropolitan Washington Council of Governments ("COG") and the Northern Virginia Cooperative Purchasing Council as set forth in the extension checklist contained in the Bid Form. The following conditions shall apply to the extension of an award to a designated jurisdiction:

- a. A negative reply to inclusion of any jurisdiction shall not adversely affect consideration of a bid for award.
- b. There shall be no obligation on the part of any designated jurisdiction to utilize an award extended to that jurisdiction.
- c. The awardee is solely responsible for notification to the identified jurisdictions of the availability of the award.
- d. City of Fairfax shall not be held responsible for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.
- e. Participating jurisdictions will be permitted to purchase at contract prices in accordance with contract terms. Participating jurisdictions will place their orders directly with the successful bidder and will be responsible for placing orders directly with the successful bidder, arranging deliveries, reconciling discrepancies and invoices, and issuing payments.
- f. Each participating jurisdiction has the option of executing a separate contract with the successful bidder. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required insurance policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the successful bidder, the awardee may

withdraw its extension of the award to that jurisdiction.

- g. Any extension to another jurisdiction shall be at the unit prices identified on the Bid Form. Bidders shall not, under the conditions of this extension, offer any adjustment, addition, modification or other change to the technical requirements of this solicitation or the unit prices awarded by City of Fairfax under this solicitation to any public body to which the award is extended.

31. NOTICE OF DECISION TO AWARD

When the City has made a decision to award a contract(s), a Notice of Decision to Award notification will be posted on the City website to notify all interested parties.

PART TWO – SPECIFICATIONS/SCOPE OF WORK

1.0 PURPOSE

The purpose of this solicitation is to establish a term contract(s) for heavy-duty trucks and light-duty vehicles repair and maintenance services and OEM parts on as needed basis for up to a five (5) year period. Authorized City personnel will be placing orders for specific quantities of items and or authorize work under as requirements arise.

2.0 PERIOD OF CONTRACT

The period of this contract shall be from date of the award through June 30, 2022. The obligation of the City to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this Invitation for Bid is subject to appropriations by the City of Fairfax Council to satisfy payment of such obligations. City's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the Contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the City will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The City will provide the Contractor with written notice of nonappropriation of funds within thirty (30) calendar days after action is completed by the City Council. However, City's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

3.0 PRICES AND PRICE ADJUSTMENT

All prices/discounts shall be F.O.B. Destination and shall include all charges that may be imposed in fulfilling the terms of this contract.

The Contractor agrees that for unit price contracts, prices shall remain firm throughout the Contract Term. The percentage discount offered for items covered in the vendor's catalog shall remain firm for the duration of the contract.

4.0 PRICE REDUCTION

If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten (10) days of any general price reduction notify the Buyer of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Buyer. The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price

reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

5.0 QUALIFICATION OF BIDDERS

Bidders shall include a letter of authorization or certification from the manufacturer allowing distribution of OEM parts and performing proprietary work on the trucks.

Bidders shall have five (5) years of experience maintaining and repairing commercial grade trucks. All technicians performing work on City trucks shall be qualified for the work intended and have the appropriate ASE or Manufacture certification. Proof of these certification shall accompany all bids.

The Contractor shall have secured and or gated garage to ensure the safekeeping of City property. The Contractor's shop shall not be more than thirty (30) miles away from City of Fairfax and shall be equipped with the latest diagnostic tools and equipment. The Contractor shall have road capability (i.e. respond to a disabled truck on the road and provide towing, if necessary). The City may elect to inspect bidder's facility prior to contract award.

6.0 SPECIFICATIONS/SCOPE OF WORK

A. Delivery /Time of Performance

Unless otherwise specified in writing by the City Project Office, all items ordered shall be delivered within the hours of 6:30 am to 3:00 pm. All items order by the City shall be delivered to:

City of Fairfax
Fleet Maintenance Division
3410 Pickett Road
Fairfax, VA 22031

The City may pick up orders from the vendor when it is in the best interest of the City. In these instances the Contractor shall release the materials only to the designated City personnel.

Deliveries shall be made at destination within the shortest time frame possible for stock and non-stock items. For Stock items, deliveries shall be made within twenty four (24) hours after receipt of City order. Bidders shall insert a definitive time frame, in days, on the Agreement Pricing Schedule the time frame during which non-stock items will be delivered once City is order for such items is received by the Bidder.

All repairs and or maintenance services requested and authorized by the City shall be performed within the shortest timeframe possible. All city vehicles shall be repaired within seven (7) days following the date of vehicles arrive at the Contactor's shop. The Contractor shall submit a written request for a time frame longer than seven (7) days and provide justification for such delays, when a vehicle is suspected to need more time for service/repair. The City will review the Contractor's request and will either authorize or reject such request in its sole discretion.

B. Responsibility for Supplies Tendered

Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point,

but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

C. On-Call Repair Services

The Contractor shall respond to emergency breakdowns within two (2) hours after contacted by the City of Fairfax, this response time is required for normal and after hours and holidays. In the event of failure of any vehicles under this Contract that was previously worked on by the contractor, the Contractor shall perform all necessary repairs within five (5) days of receipt of disabled vehicle. The Contractor shall notify the City Project Officer immediately upon receipt of the vehicle if the repair services would take more than five (5) days, following procedures outlined in paragraph B, above. City reserves the right to retain other contractors to perform the service, if doing so is in the best interest of the City. If the Contractor is unable to or fails to fulfill the on-call requests within the required timeframe on two (2) or more occasions during Contract term, then the City may terminate the Contract.

D. Material and Workmanship

All parts used or furnished under this Contract shall be new and genuine manufacturer's recommended or authorized replacement parts. Use of rummage or used parts is prohibited. Manufacturer rebuilt parts and components may be authorized by the City Project Officer, provided such parts and components carry the same warranty as the new parts and or components. Prior written approval of the City Project Officer is required when rebuilt parts are proposed for use.

Bidders must extend the manufacturer's standard warranty on all new parts.

E. Disposal Of Hazardous Waste

The Contractor shall be responsible for proper disposal of all waste and follow all applicable federal, state, and local regulations for such disposals.

F. Silence Of Specifications

The apparent silence of these specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

G. Invoicing Procedures

The Contractor shall submit a Summary Invoice once each month, listing the Sales/Delivery Ticket numbers covering deliveries made during the monthly billing period and submitted to the BILL TO address shown on the Purchase Order. The invoice must be accompanied by one copy of each signed Sales/Delivery Ticket.

The invoice shall contain the applicable Purchase Order number and the name of the Agency receiving the supplies.

Invoices shall be emailed to:

Lee.Hall@fairfaxva.gov and Accountspayable@fairfaxva.gov

H. Sales/Delivery Tickets

Orders placed under this Contract for delivery or for pick up by an authorized representative, shall be supported by the Contractor's Sales/Delivery Ticket. The Contractor's Sales/Delivery Ticket shall contain the following information:

1. Contractor's Name;
2. Purchase Order and Contract Number;
3. Date of Purchase or order;
4. Itemized list of parts/services furnished;
5. Quantity, unit price and extension of each item, and total, less any applicable trade discount in accordance with the Contract; and
6. Name of authorized representative ordering the supplies and services.

In all instances, the Contractor will prepare a Sales/Delivery Ticket, whether delivery is made by the Contractor or pick up is made by a City representative at the Contractor's place of business. The Contractor's Sales/Delivery Ticket will be signed, by the City representative, with a copy being retained by the Contractor.

PART THREE – BID FORM AND ATTACHMENTS (REQUIRED SUBMISSIONS)



INVITATION FOR BID NUMBER 17036

BIDFORM

THE FULL LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS BID FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE SOLICITATION TO BE SUBMITTED WITH THIS BID FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED AMENDMENTS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE BIDDER, OR THE BID MAY BE REJECTED:

SUBMITTED BY: (Legal Name Of Entity)	
FORMER NAMES: (Insert all other names that this entity has been known by in the past twenty (20) years)	
AGE OF THE ENTITY: How many Years this entity has been in business under the current name?	
PRINCIPAL PLACE OF BUSINESS:	
TELEPHONE NO.	FAX NO.
CORPORATE WEBSITE	
DUNS NUMBER:	
FORM OF OWNERSHIP: _____ CORPORATION; _____ GENERAL PARTNERSHIP; _____ UNINCORPORATED ASSOCIATION; _____ LIMITED LIABILITY COMPANY; _____ LIMITED PARTNERSHIP; _____ SOLE PROPRIETORSHIP	
WHERE THE ENTITY WAS FORMED: (INSERT NAME OF STATE) _____	
IDENTIFICATION NO. ISSUED TO THE FIRM BY SCC: If Bidder is exempt from the SCC authorization requirement, the it shall include a statement on the entity's letterhead with its application certifying their exemption from this requirement. _____	
VA. CONTRACTOR'S LICENSE #: (if applicable)	Class: _____

<p>DEBARMENT, DISQUALIFICATION AND OR SUSPENSION: Is the entity or any of its principals are currently debarred, suspended or disqualified from submitting responses to the City, or any other state, local or federal entities? _____ YES; _____ NO</p>
<p>BIDDER'S STATUS PLEASE INITIAL ONE: _____ MINORITY OWNED; _____ WOMAN OWNED; _____ NEITHER</p>
<p>NOTE: If the answers to any questions below are yes, use additional pages to provide detailed description of the situation and or provide full documentation</p>
<p>CLAIMS/FINAL RESOLUTION/JUDGMENTS Have any of the following actions occurred on, or in conjunction with, any project(s) performed by the Bidder, any affiliate, or their officers, partners or directors in the last five (5) years? "Legal Actions" shall include civil or criminal litigation, administrative; Proceedings, indictments, arbitrations or the like _____ YES; _____ NO</p>
<p>TERMINATION/FAILURE TO COMPLETE Has the Bidder ever been terminated for work awarded to it? This includes termination for default (or cause) or for the convenience of the Owner? Has Bidder for any other reason failed to complete a project? _____ YES; _____ NO</p>
<p>BREACH, DEFAULT, DEBARRED: Within the last five (5) years, has Bidder been disqualified, removed, or otherwise declared in material breach or default of any contract by a public agency, or debarred from participating in bidding for any contract? If yes, please explain the circumstances: _____ YES; _____ NO</p>
<p>RELEASE FROM CONTRACT APPLICATION, BID OR AWARD: Has the Bidder filed a request to be released from an Application, bid, selection or award of any contract within the last five (5) years? If yes, please explain the circumstances. _____ YES; _____ NO</p>
<p>FAILURE TO EXECUTE A CONTRACT: Has the Bidder ever been selected for award or awarded a contract in which the entity failed to execute the contract? This would include: the entity not signing the contract documents; an inability of the company to obtain insurance requirements; or failure of the company to submit required forms and attestations. If yes, please explain the circumstances: _____ YES; _____ NO</p>
<p>BANKRUPTCY: Has the Bidder filed for bankruptcy in the last seven years or is your firm currently the debtor in a bankruptcy case? If yes, please explain the circumstances _____ YES; _____ NO</p>
<p>CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES Provide the name and address of the person designated by the Bidder to receive notices and other communications (Refer to the section headed Notices in _____ _____</p>

Part Four City of Fairfax Contractual Terms and Condition
of this solicitation for further details): _____

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Bidder must identify the data and materials need such protection prior to submission of such data and material, and state the reasons why protection is necessary. Please mark one:

() **Yes**, the Application I have submitted does contain trade secrets and/or proprietary information.

() **No**, the Application I have submitted does not contain any trade secrets and/or proprietary information.

If **Yes**, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the Application containing such data or materials:

STATE THE SPECIFIC REASON(S) WHY PROTECTION IS NECESSARY:

NOTE: If you fail to identify the data or other materials to be protected and state the reasons why such protection is necessary in the space provided above, you have not invoked the protection, accordingly, effectively the Application will be open for public inspection consistent with applicable law.

CERTIFICATION OF NON-COLLUSION:

The undersigned certifies that this Application is not the result of, or affected by, any act of collusion with another person(as defined in Code of Virginia Section 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia §18.2-498.1 et seq.).

CONFLICT OF INTEREST:

The undersigned certifies and warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature or work under the contract and the bidder's organizational, financial, contractual or other interest are such that award of the contract may result in the bidder receiving an unfair competitive advantage, or the bidder's objectivity in performing the contract work may be impaired. The bidder agrees that if after being awarded it discovers an organizational conflict of interest with respect to the being awarded, it shall make an immediate and full disclosure in writing to the City of Fairfax which shall include a description of the action which the bidder has taken or intends to take to eliminate or neutralize the conflict.

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID (I.E. PROJECT MANAGER):

NAME (PRINTED): _____ TITLE: _____

E-MAIL ADDRESS: _____ TEL. NO.: _____

The undersigned swears or affirms under the penalty of perjury and upon personal knowledge that the contents of the Application for Prequalification are true and correct.

The undersigned swears or affirms under the penalty of perjury that the Bidder, its agents, servants and/or employees, to the best of his/her knowledge and belief, have not in any way colluded with anyone for and on behalf of the Bidder an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Bidder, or themselves, to gain any favoritism in the award of any contract resulting from this bid.

NAME OF AND TITLE BIDDER'S REPRESENTATIVE

SIGNATURE OF BIDDER'S REPRESENTATIVE

INVITATION FOR BID NUMBER 17036

BID FORM (CONTD.)

AGREEMENT PRICING SCHEDULE

FOR PROVIDING **COMMERCIAL AND LIGHT DUTY VEHICLES OEM PARTS AND REPAIRS** PER THE TERMS, CONDITIONS, AND SPECIFICATION OF THIS SOLICITATION:

Normal Hours/After Hours/Road Service

#	LABOR CATEGORY	NORMAL HOURS HOURLY RATE	AFTER HOURS HOURLY RATE	ROAD SERVICE HOURLY RATE
1	Certified Mechanic for International			
2	Certified Mechanic for Freightliner			
3	Certified Mechanic for Mack			
4	Certified Mechanic for Ford			
5	Certified Mechanic for Chevrolet/GMC			
6	Certified Mechanic for Detroit			
7	Certified Mechanic for Cummins			
8	Certified Mechanic for Allison			
9	Certified Mechanic for Heil			
10	Certified Mechanic for Pac Mac			
11	Certified Mechanic for Thermo King			

A. OEM Parts

ITEM No.	MANUFACTURER	PRICE LIST NO. AND DATE	DELIVERY DAYS ARO STOCK ITEMS	DELIVERY DAYS ARO NON STOCK ITEMS	PERCENTAGE (%) OF DISCOUNT OFF LIST PRICE
1	International				
2	Freightliner				
3	Mack				
4	Ford				
5	Chevrolet/GMC				
6	Detroit				
7	Cummins				
8	Allison				
9	Heil				
10	Pac Mac				
11	Thermo King				

B. Certification and Disclosures

1	Indicate if there are any minimum order quantity restriction that will be imposed on City orders.	YES	NO
DESCRIBE:			
2	Do you offer full credit for return of new parts for stock items?	YES	NO
3	Do you offer full credit for return of new parts for non-stock items?	YES	NO

4	What are your warranty terms and conditions on repairs?		
5	Does your company provide on-site technical support?	YES	NO
6	What is the on-site technical support hourly rate?	\$ _____	
7	What is your on-site technical support response time?	_____ HRS	
8	MFG for technical support		
9	Will you complete all repairs within seven (7) calendar days following receipt of the Equipment?	YES	NO
10	If the answer to the above is "No" provide rationale.		
11	Is your garage, where City Equipment will be serviced meet the requirements of this solicitation?	YES	NO
12	Do you provide road service?	YES	NO
13	Provide the street address for your facility or garage, where the City equipment will be serviced: _____ _____		
14	Provide hours of operation for the garage or facility: NOTE: City requires facilities that are in operation seven (7) days a week/three hundred and sixty five (365) days a year. _____ _____		
15	Does your company have five years of experience working with heavy, medium or light duty vehicles?	YES	NO
16	Do your technicians have ASE and or have the manufacturer certification NOTE: IN ADDITION BIDDERS SHALL FILL OUT THE FORM ON PAGE 23 AND ATTACH COPIES OF ALL APPROPRIATE CERTIFICATIONS WITH THEIR BIDS. FAILURE TO SUBMIT REQUIRED DOCUMENTATION MAY RESULT IN REJECTION OF BIDS FOR REASON OF NON-RESPONSIVENESS.	YES	NO

The undersigned acknowledges receipt of the following amendments:

AMENDMENT NO.	DATE	INITIAL

BIDDER'S NAME

BIDDER'S AUTHORIZED SIGNATORY

DATE

NAME\ TITLE OF AUTHORIZED SIGNATORY

**BID FORM (CONTD.)
REFERENCE DATA SHEET**

Bidder's Name: _____

Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			

**BID FORM (CONTD.)
 BIDDER'S QUALIFICATION STATEMENT (Contd.)**

KEY PERSONNEL

PROVIDE INFORMATION ABOUT THE EXPERIENCE OF KEY PERSONNEL OF THE FIRM THE INFORMATION SHALL INCLUDE NAME, YEARS AND TYPES OF EXPERIENCE, TYPES OF CERTIFICATION POSSESSED, ETC.

#	EMPLOYEE NAME	INTENDED RESPONSIBILITY UNDER THIS CONTRACT	QUALIFICATION AND EXPERIENCE

_____ **BIDDER'S NAME**

Metropolitan Washington Council of Governments Rider Clause

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. IF AUTHORIZED BY THE BIDDER(S), RESULTANT CONTRACT(S) WILL BE EXTENDED TO ANY OR ALL OF THE LISTED MEMBERS AS DESIGNATED BY THE BIDDER TO PURCHASE AT CONTRACT PRICES IN ACCORDANCE WITH CONTRACT TERMS.
- B. ANY MEMBER UTILIZING SUCH CONTRACT(S) WILL PLACE ITS OWN ORDER(S) DIRECTLY WITH THE SUCCESSFUL CONTRACTOR. THERE SHALL BE NO OBLIGATION ON THE PART OF ANY PARTICIPATING MEMBER TO UTILIZE THE CONTRACT(S).
- C. A NEGATIVE REPLY WILL NOT ADVERSELY AFFECT CONSIDERATION OF YOUR BID/PROPOSAL.
- D. IT IS THE AWARDED VENDOR'S RESPONSIBILITY TO NOTIFY THE MEMBERS SHOWN BELOW OF THE AVAILABILITY OF THE CONTRACT(S).
- E. EACH PARTICIPATING JURISDICTION HAS THE OPTION OF EXECUTING A SEPARATE CONTRACT WITH THE AWARDEE. CONTRACTS ENTERED INTO WITH A PARTICIPATING JURISDICTION MAY CONTAIN GENERAL TERMS AND CONDITIONS UNIQUE TO THAT JURISDICTION INCLUDING, BY WAY OF ILLUSTRATION AND NOT LIMITATION, CLAUSES COVERING MINORITY PARTICIPATION, NON-DISCRIMINATION, INDEMNIFICATION, NAMING THE JURISDICTION AS AN ADDITIONAL INSURED UNDER ANY REQUIRED COMPREHENSIVE GENERAL LIABILITY POLICIES, AND VENUE. IF, WHEN PREPARING SUCH A CONTRACT, THE GENERAL TERMS AND CONDITIONS OF A JURISDICTION ARE UNACCEPTABLE TO THE AWARDEE, THE AWARDEE MAY WITHDRAW ITS EXTENSION OF THE AWARD TO THAT JURISDICTION.
- F. THE ISSUING JURISDICTION SHALL NOT BE HELD LIABLE FOR ANY COSTS OR DAMAGES INCURRED BY ANOTHER JURISDICTION AS A RESULT OF ANY AWARD EXTENDED TO THAT JURISDICTION BY THE AWARDEE.

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

YES	NO	JURISDICTION	YES	NO	JURISDICTION
✓		ALEXANDRIA, VIRGINIA	✓		ALEXANDRIA PUBLIC SCHOOLS
✓		ALEXANDRIA SANITATION AUTHORITY	✓		ARLINGTON COUNTY, VIRGINIA
✓		ARLINGTON COUNTY PUBLIC SCHOOLS	✓		BLADENSBURG, MARYLAND
✓		BOWIE, MARYLAND	✓		COLLEGE PARK, MARYLAND
✓		CHARLES COUNTY PUBLIC SCHOOLS	✓		DISTRICT OF COLUMBIA
✓		CULPEPER COUNTY, VIRGINIA	✓		DISTRICT OF COLUMBIA PUBLIC SCHOOLS
✓		DISTRICT OF COLUMBIA COURTS	✓		FAIRFAX, VIRGINIA
✓		DISTRICT OF COLUMBIA WATER & SEWER AUTHORITY	✓		FAIRFAX COUNTY WATER AUTHORITY
✓		FAIRFAX COUNTY, VIRGINIA	✓		FAUQUIER COUNTY SCHOOLS & GOVERNMENT, VIRGINIA
✓		FALLS CHURCH, VIRGINIA	✓		FREDERICK COUNTY, MARYLAND
✓		GREENBELT, MARYLAND	✓		FREDERICK, MARYLAND
✓		GAITHERSBURG, MARYLAND	✓		LEESBURG, VIRGINIA
✓		HERNDON, VIRGINIA	✓		LOUDOUN COUNTY PUBLIC SCHOOLS
✓		LOUDOUN COUNTY, VIRGINIA	✓		MANASSAS, VIRGINIA
✓		LOUDOUN COUNTY SANITATION AUTHORITY	✓		MANASSAS PARK, VIRGINIA
✓		CITY OF MANASSAS PUBLIC SCHOOLS	✓		METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
✓		MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMM.	✓		MONTGOMERY COUNTY PUBLIC SCHOOLS
✓		MONTGOMERY COUNTY, MARYLAND	✓		MONTGOMERY COLLEGE
✓		METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS	✓		PRINCE GEORGE'S COUNTY, MARYLAND
✓		OMNIRIDE	✓		PRINCE WILLIAM COUNTY, VIRGINIA
✓		PRINCE GEORGE'S PUBLIC SCHOOLS	✓		PRINCE WILLIAM COUNTY SERVICE AUTHORITY
✓		PRINCE WILLIAM COUNTY PUBLIC SCHOOLS	✓		SPOTSYLVANIA COUNTY SCHOOLS
✓		ROCKVILLE, MARYLAND	✓		TAKOMA PARK, MARYLAND
✓		STAFFORD COUNTY, VIRGINIA	✓		VIENNA, VIRGINIA
✓		UPPER OCCOQUAN SEWAGE AUTHORITY	✓		WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
✓		VIRGINIA RAILWAY EXPRESS	✓		WINCHESTER, VIRGINIA
✓		WASHINGTON SUBURBAN SANITARY COMMISSION	✓		WINCHESTER PUBLIC SCHOOLS

Vendor Name: DPF Services LLC

INSURANCE CHECKLIST

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"

COVERAGES REQUIRED		LIMITS (FIGURES DENOTE MINIMUMS)
X	1	WORKERS' COMPENSATION STATUTORY LIMITS OF VIRGINIA
X	2	EMPLOYER'S LIABILITY \$100,000 ACCIDENT, \$100,000 DISEASE, \$500,000 DISEASE POLICY LIMIT
X	3	COMMERCIAL GENERAL LIABILITY(CGL) \$2,000,000 CSL BI/PD EACH OCCURRENCE, \$2 MILLION ANNUAL AGGREGATE
X	4	PREMISES/OPERATIONS \$500,000 CSL BI/PD EACH OCCURRENCE MILLION ANNUAL AGGREGATE
X	5	AUTOMOBILE LIABILITY \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	6	OWNED/HIRED/NON-OWNED VEHICLES \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	7	INDEPENDENT CONTRACTORS \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	8	PRODUCTS LIABILITY \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	9	COMPLETED OPERATIONS \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	10	CONTRACTUAL LIABILITY (MUST BE SHOWN ON CERTIFICATE) \$500,000 CSL BI/PD EACH OCCURRENCE
	11	PERSONAL AND ADVERTISING INJURY LIABILITY \$1 MILLION EA. OFFENSE, \$1 MILLION ANNUAL AGGREGATE
X	12	UMBRELLA LIABILITY \$1 MILLION BODILY INJURY, PROPERTY DAMAGE AND PERSONAL INJURY
	13	PER PROJECT AGGREGATE \$1 MILLION PER OCCURRENCE/CLAIM
	14	PROFESSIONAL LIABILITY
	A	ARCHITECTS AND ENGINEERS \$1 MILLION PER OCCURRENCE/CLAIM
	B	ASBESTOS REMOVAL LIABILITY \$2 MILLION PER OCCURRENCE/CLAIM
	C	MEDICAL MALPRACTICE \$1 MILLION PER OCCURRENCE/CLAIM
	D	MEDICAL PROFESSIONAL LIABILITY \$1 MILLION PER OCCURRENCE/CLAIM
	15	MISCELLANEOUS E&O \$1 MILLION PER OCCURRENCE/CLAIM
	16	MOTOR CARRIER ACT END. (MCS-90) \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
	17	MOTOR CARGO INSURANCE
	18	GARAGE LIABILITY \$1 MILLION BODILY INJURY, PROPERTY DAMAGE PER OCCURRENCE
	19	GARAGE KEEPERS LIABILITY \$500,000 COMPREHENSIVE, \$500,000 COLLISION
	20	INLAND MARINE-BAILLIE'S INSURANCE \$
	21	MOVING AND RIGGING FLOATER ENDORSEMENT TO CGL
	22	DISHONESTY BOND \$
	23	BUILDER'S RISK PROVIDE COVERAGE IN THE FULL AMOUNT OF CONTRACT
	24	XCU COVERAGE ENDORSEMENT TO CGL
	25	USL&H FEDERAL STATUTORY LIMITS
X	26	CARRIER RATING SHALL BE BEST'S RATING OF A-VII OR BETTER OR ITS EQUIVALENT
X	27	NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE IN COVERAGE SHALL BE PROVIDED TO CITY AT LEAST 30 DAYS PRIOR TO ACTION
X	28	THE CITY SHALL BE AN ADDITIONAL INSURED ON ALL POLICIES EXCEPT WORKERS COMPENSATION, PROFESSIONAL LIABILITY, AND AUTOMOBILE LIABILITY
X	29	CERTIFICATE OF INSURANCE SHALL SHOW SOLICITATION NUMBER AND TITLE

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the bidder named below and have advised the bidder of required coverages not provided through this agency.

AGENCY NAME: _____ AUTH. SIGNATURE: _____

BIDDER'S STATEMENT:

If awarded the Contract, I will comply with contract insurance requirements.

BIDDER NAME: _____ AUTH. SIGNATURE: _____

PART FOUR – CITY OF FAIRFAX CONTRACTUAL TERMS AND CONDITIONS

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of the bid of the successful bidder (hereinafter "Contractor") and City of Fairfax, Virginia (hereinafter "City") Invitation for Bid No. 17036.

The Contract Documents set forth the entire agreement between the City and the Contractor. The City and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents. The Contract Documents may be referred to hereinafter as the "Contract" or "Agreement".

2. CONTRACT TERM

The term of this Agreement will commence on the date of execution by the City, and shall be completed no later than **JUNE 30, 2022**, subject to any written modifications as provided for in the Contract Documents. .

3. CONTRACT PRICING

Unless otherwise provided in the Contract Documents, the Contractor shall provide the goods covered in the City's Invitation for Bid No. 17036 at the prices provided in the bid of the Contractor.

4. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the City Project Officer ("Project Officer"), who shall be appointed by the Director of City department or agency requesting the work under the Contract Documents. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

5. PAYMENT TERMS

Payment terms will be recorded by the City as Net thirty (30) days. The City will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the City for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the City Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the City.

6. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the City for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the City and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the City for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the City. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

7. NON-APPROPRIATION

All funds for payments by the City to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the City Council of City of Fairfax, Virginia. In the event of non-appropriation of funds by the City Council of City of Fairfax, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the Contract, without termination charge or other liability to the City, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this Contract beyond the date of termination specified in the City's written notice.

8. REQUIREMENTS CONTRACT (ESTIMATED QUANTITIES)

During the Initial Contract Term or any Subsequent Contract Term, the Contractor will furnish all of the goods or services described in the Contract Documents if so requested by the City. The Contractor understands and agrees that this is a requirements contract and the City will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the City. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the City for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the City is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that the City may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract.

9. CITY PURCHASE ORDER REQUIREMENT

City purchases are authorized only if a City Purchase Order is issued in advance of the transaction, indicating that the ordering department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering department. The City will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the City. If the Contractor provides goods or services without a signed City Purchase Order, it does so at its own risk and sole expense.

10. DELIVERY

All goods are purchased F.O.B. destination in City of Fairfax as designated in this Contract. All

costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

11. WARRANTY

All goods and materials provided to the City shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to the Fairfax City. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the City in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the City and the Contractor in advance and in a signed writing.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the City will be at the delivery location in the City of Fairfax, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The City will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the City. The City's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The City reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

13. DISPOSAL OF PACKING MATERIALS, TRASH, AND DEBRIS

The Contractor shall be responsible for all costs associated with the immediate removal of all packing materials, trash, and debris ("Waste"), and legal disposal of said Waste off-site. No City building or waste containers shall be used for such Waste. Failure to adhere to this requirement will result in the City contracting for removal and disposal of Waste left by the Contractor. By accepting this award, the Contractor agrees that all costs incurred by the City for removal and disposal of Waste left by the Contractor will be deducted from the final payment due to the Contractor. Similarly, any damage to walls, floors, carpeting or any other City-owned or City-controlled property caused by the Contractor or the Contractor's agents during service provision, delivery, setup or equipment installation shall be repaired or caused to be repaired by the City at the Contractor's sole expense with all costs of the repair deducted from the Contractor's final payment unless the City agrees that such repairs will be made by the Contractor. Any such Contractor repairs shall be made within ten (10) days of the date of damage to the satisfaction of the City.

14. OSHA REQUIREMENTS

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration ("OSHA") requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or federal

occupational safety and health requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor.

15. HAZARDOUS MATERIALS

City of Fairfax is subject to the Hazard Communication Standard, 29 CFR § 1910.1200 ("Standard"). The Contractor agrees that it will provide or cause to be provided Material Safety Data Sheets ("MSDS") required under the Standard for all hazardous materials supplied to the City or used in the performance of the Work. Such MSDS shall be delivered to the City no later than the time of actual delivery of any hazardous materials to the City or use of such material in the performance of work under the Contract by the Contractor or its subcontractors, whichever occurs first. Container labeling that meets the requirements of the Standard shall be appropriately affixed to the shipping or internal containers. The City reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when MSDS have not been received prior to or at the time of receipt of the shipment for use by the City or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of MSDS is the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials.

16. PROHIBITION AGAINST ASBESTOS-CONTAINING MATERIALS

No goods or equipment provided to the City or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to worker protection, the immediate removal and legal disposal of the goods, equipment or materials containing asbestos. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this contract. The Contractor also shall reimburse to the City all expenses related to and the costs of such goods, equipment, supplies or materials installed. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the City, the City shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The City shall be entitled to offset such expenses against any sums owed by the City to the Contractor under this Contract.

17. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or Bidder for employment because of race, religion, color, sex, national origin, age, and disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and Bidders for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

18. Employment Of unauthorized aliens Prohibited

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

19. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and Bidders for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Fairfax City, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

20. FAILURE TO DELIVER

In case of failure by the Contractor to deliver goods or services in accordance with the Contract Documents, the City, after written notice, may procure the same or similar goods or services from other sources and the Contractor shall be liable for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have pursuant to this Contract or under law. At its discretion, the City shall be entitled to offset such costs against any sums owed by the City to the Contractor.

21. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the City determines that all the following requirements and conditions have been satisfactorily met: the City has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the City shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the City in its discretion.

If the City determines that the Contractor has failed to perform satisfactorily, then the City will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract

performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the City prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the City Project Officer within fifteen (15) days after the expiration of the Cure Period. The City may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the City terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the City to the Contractor (unless the City in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the City for all costs incurred by the City after the effective date of termination, including costs required to be expended by the City to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the City upon demand by the City. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the City, and the City shall be entitled to recover, all damages to which the City is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the City to the Contractor under the Contract and all attorney fees and costs incurred by the City to enforce any provision of this Contract.

Except as otherwise directed by the City in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

22. TERMINATION FOR THE CONVENIENCE OF THE CITY

The performance of Work under this Contract may be terminated by the City, in whole or in part, whenever the City shall determine that such termination is in the City's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the City prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the City; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

23. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the City, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, council, and commissions (collectively the "City" for purposes of this section) from and against any and all claims made by third parties or by the City for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the City, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the City for any and all expenses, including, but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the City and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

24. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask work and trademark) of third parties are infringed or in any manner involved in or related to the goods and/or services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the City, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the City. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Price includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the work hereunder. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the City, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the City for any and all expenses, including, but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the City and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

25. COPYRIGHT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

26. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all City information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

27. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference all Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

28. CITY EMPLOYEES

No employee of the City shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

29. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The City shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond the control of the City that make performance impossible or illegal, unless otherwise specified in the Contract.

30. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the City.

31. RELATION TO THE CITY

The Contractor is an independent contractor, and neither the Contractor nor its employees or

subcontractors will, under any circumstances, be considered employees, servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The City will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees.

32. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the City under this Contract.

33. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The City or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term and any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the City does not have ready access) within five (5) years after final payment, the Contractor shall notify the City at least thirty (30) days prior to such disposal, and if the City objects, shall not dispose of the records.

34. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the City.

35. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the City.

36. CITY OF FAIRFAX ORDINANCE AND VIRGINIA PUBLIC PROCUREMENT ACT

Notwithstanding any provision to the contrary herein, no provision of the City of Fairfax and Virginia Public Procurement Act or any applicable City policy is waived in whole or in part.

37. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the City of Fairfax Ordinance and Virginia Public Procurement Act, claims denied by the Project Officer may be submitted to the City Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the City Manager in the event of a contractual dispute, as that term is defined in the City of Fairfax Ordinance and Virginia Public Procurement Act, is sixty (60) days. The Contractor shall not cause a delay in the Work pending any decision of the Project Officer, City Manager, City Council, or a court of law.

38. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of

the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for City of Fairfax, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

39. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

40. NONEXCLUSIVITY OF REMEDIES

All remedies available to the City under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the City at law or in equity.

41. NON-WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

42. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

43. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the City pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the City. The parties intend for this provision to be read as broadly as possible.

44. SURVIVAL OF TERMS

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO CITY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION; AND DATA SECURITY.

45. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

46. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

47. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR: REFER TO BID FORM OF CONTRACTOR

TO THE CITY:

Lee Hall, Project Officer
City of Fairfax Fleet Division
3410 Pickett Road
Fairfax, VA 22031

AND

Maryam N. Zahory, CPPO, CPPB, Buyer
City of Fairfax, Virginia
10455 Armstrong Street, Suite 312
Fairfax, Virginia 22030

48. NON-DISCRIMINATION NOTICE

City of Fairfax does not discriminate against faith-based organizations.

PART FIVE – CITY OF FAIRFAX INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See the Insurance Checklist (part of the Bid or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the City and the Contractor.

Prior to award of this Contract and upon any Contract extension thereafter, the Contractor shall provide to the City Buyer evidence indicating that the Contractor has in force the coverage and endorsements (collectively referred to hereinafter "coverage", "coverages" or "insurance") required below. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated below or in the Contract Documents.

All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with an A.M. Best rating of "A-VII", and as acceptable to the City. The insurance requirements herein shall not operate as a limitation of the Contractor's liability or as a limitation of the Contractor's duty of indemnification, as set forth in this solicitation and any resulting contract. The Contractor is responsible for determining whether the minimum coverage below is adequate to protect its interest.

The Contractor shall secure and maintain (and ensure that its subcontractors, if any, secure and maintain) all insurance required by law or this Contract, including without limitation:

1. **Workers Compensation** - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/100,000. The City will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
2. **Commercial General Liability** - \$2,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations. Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - A. General aggregate limit is to apply per project;
 - B. Premises/Operations;
 - C. Actions of Independent Contractors;
 - D. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
 - E. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract. The general aggregate limit shall apply to this Contract;
 - F. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
3. **Business Automobile Liability** - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).

4. **Additional Insured** - City of Fairfax, and its officers, elected and appointed officials, employees, and agents shall be named as additional insureds on all policies, except Workers Compensation, Auto, and Professional Liability. A copy of the Additional Insured endorsement, or an "Accord" certificate with the additional insured endorsement box checked for all policies that include an additional insured endorsement, must be provided by the Contractor to the City Buyer prior to the execution of this Contract and any Contract extension. Failure to provide such documentation shall result in cancellation of the award or of the Contract.
5. **Cancellation** - If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the City immediately notified of the replacement. Not having the required insurance throughout the Contract Term is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the City thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium). A copy of that endorsement shall be provided to the City Buyer prior to the execution of this Contract or any Contract extension thereafter.
6. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
7. **Contract Identification** – All documentation and copies of endorsements required hereunder shall state this Contract's number and title.
8. **Certificate Holder** - The Certificate Holder must be identified as:

City of Fairfax, Virginia
c/o City Risk Manager
10455 Armstrong Street, Suite 331
Fairfax, Virginia 22030

The Contractor must disclose the amount of any deductible or self- insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The City reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the City may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure additional protection for the City .

The Contractor shall require all subcontractors to maintain during the term of this contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' documentation of coverage and endorsements specified herein to the City Buyer immediately upon request by the City and/or prior to a subcontractor performing work related to this Contract.

No acceptance or approval of any insurance by the City shall be construed as relieving or

excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity, the alternative coverage(s) are submitted to and acceptable to the City and the terms additional endorsements required hereunder are met to the satisfaction of the City Buyer or Risk Manager. The Contractor must provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy and security of the insurance funding.