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CITY OF FAIRFAX, VIRGINIA

Contract Number: **CTR049229**
Contract Title: **Fire and Rescue Equipment**

This contract entered into this 18th day of March 2026, by North America Fire Equipment Co., Inc, PO Box 2928 Decatur, AL 35602, hereinafter called the "Contractor" and City of Fairfax, VA, 22030.

WITNESSETH that the Contractor and City of Fairfax, VA, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

1. **SCOPE OF CONTRACT**: The Contractor shall provide Fire and Rescue Equipment to the City of Fairfax as set forth in the Contract Documents.

2. **PERIOD OF PERFORMANCE:** The term for this Master Agreement shall be for four (4) years and is effective from March 16, 2026, through March 15, 2030.

3. **AWARDED CATEGORY**
   - Hoses
   - Appliances
   - Tripod Lighting
   - Saws
   - Fans
   - Life Safety Rope
   - Non-Fluorinated Foam Concentrate
   - Firefighter PPE

4. **COMMODITY CODE:**
   34072 – Rescue Equipment
   34012 – Couplings, Fire Hose
   34034 – Fire Protection Clothing
   34064 – Nozzles and Parts, Fire Hose

5. **PAYMENT TERMS:** NET 30

6. **PRIMARY CONTACT**:
   The primary contact individual for this contract are as follows:

   CONTRACT CONTACT INFORMATION

NAME	Ronald Woodall
TELEPHONE	256-353-7100 ext. 127
EMAIL	ronald.woodall@nafeco.com

7. **THE MASTER AGREEMENT herby consists of the following:**
   (1) This signed form;
   (2) Attachment 2 – Scope of Work;
   (3) Attachment 4 – RFxPremier Master Terms and Conditions;

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(4) Attachment 13 - City of Fairfax Appendix A;
(5) Invitation for Proposal # 102434, including all exhibits and addendums;
(6) North America Fire Equipment Co., Inc. Proposal, including all clarifications, negotiations, to RFP # 102434.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR

By: DocuSigned by: Ronald Woodall 4C2E4B91DF074EE... _____

Vice President

Title: _____

FAIRFAX CITY, VA:

By: Signed by: Patricia Innocenti 8C00EC7AFC2A4DB... _____

Patricia Innocenti

Title: Purchasing Agent

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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NAFECO EQUIPMENT PRICE LIST	
HOSES	
Manufacturer	Percentage Discount Off MPL
Key Hose	28%
APPIANCES	
Manufacturer	Percentage Discount Off MPL
Akron	25%
Elkhart	25%
Kocheck	28%
TRIPOD LIGHTING	
Manufacturer	Percentage Discount Off MPL
Command Light	10%
SAWS	
Manufacturer	Percentage Discount Off MPL
SuperVac	20%
FANS	
Manufacturer	Percentage Discount Off MPL
SuperVac	20%
RamFan	4%
Tempest	4%
LIFE SAFETY ROPE	
Manufacturer	Percentage Discount Off MPL
CMC	4%
PMI	4%
Rescue Technology	4%
NON-FLUORINATED FOAM CONCENTRATE	
Manufacturer	Percentage Discount Off MPL
Enforcer	8%
Ansul/Chemguard	11%
National Foam	3%
Firefighter PPE	
Manufacturer	Percentage Discount Off MPL
Lion	31%
Innotex	15%
Firecraft	8%
HAIX	15%
Phenix Technology	4%

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Attachment 02
SCOPE OF WORK

I. OVERVIEW AND DEFINITIONS

The purpose of this RFP is to establish a Master Agreement(s) with qualified Offerors to provide competitive pricing for Fire and Rescue Equipment through their retail distribution networks to all Participating States and Political Subdivisions. The City of Fairfax, Virginia and Baxter (IA) Fire and Rescue Department are requesting proposals from qualified Offerors to provide Fire and Rescue Equipment to establish the inaugural RFxPremier contract for Fire and Rescue Equipment.

The intent of this portfolio is to provide nationwide coverage for these goods and services; however, Offerors are not required to provide nationwide coverage to be eligible for an award. Offerors are required to respond with areas they are able to cover if awarded on the Offeror Response Worksheet. The preference is for entities that provide coverage for larger regions or national coverage.

This RFP is designed to provide interested Offerors with sufficient information to submit Proposals meeting the requirements. It is not intended to be comprehensive. Each Offeror is responsible for determining all factors necessary for submission of a comprehensive Proposal. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.
The objective of the RFP is to obtain best value, and in some cases, achieve more favorable pricing than is obtainable by an individual state and local government entities.

The Master Agreement(s) resulting from this RFP may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, and territories of the United States.

II. MASTER AGREEMENT OBJECTIVES

The scope of this RFP includes Fire and Rescue Equipment subcategories. The section outlines the full list of product categories. The Offeror shall provide a category that aligns with their business model. The Offeror can provide one (1), two (2), or all Subcategories.

A. Required Capabilities

1. The Offeror shall possess a minimum of five (5) years' experience in the manufacturing or distribution of each selected Fire and Rescue Equipment Subcategory. A Dealer and/or Distributor shall be a manufacturer authorized reseller/distributor for each product presented in their proposal.

2. The Offeror shall provide a minimum of three (3) reference letters from a government entity.

B. Fire and Rescue Equipment Subcategories

1. All equipment and tools shall be new, unused, latest model year, and manufactured from high-quality materials

2. All equipment and tools shall comply with the latest editions of OSHA, NFPA, ANSI, ASTM, and EN Standards, as applicable.

3. Fire and Rescue Equipment shall encompass the standard manufacturer's warranty.

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4. **List of Subcategories**

   a. Hoses

   b. Appliances

   c. Attic, Extension, and Roof Ladders

   d. Extrication Equipment

   e. Tripod Lighting

   f. Saws

   g. Fans

   h. Life Safety Rope

   i. Non-Fluorinated Foam Concentrate

   j. Firefighter PPE

III. OFFEROR RESPONSIBILITIES AND TASKS

A. Participating Entity Terms and Conditions

The Offeror shall understand each Participating Entity reserves the right to negotiate additional terms and conditions in its Participating Addendum. Offeror shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

B. Insurance

Offerors shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Offeror shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

1. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below: (1) Commercial General Liability covering premises operations, independent Offerors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence/$2 million general aggregate; Offeror must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
2. Offeror / Offeror shall pay premiums on all insurance policies. Offeror shall provide notice to a Participating Entity who is a state within five (5) business days after Offeror is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
3. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
4. Coverage and limits shall not limit Offeror's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order

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C. Changes in Offeror Contact

The Offeror shall notify the Contract Administrator of any changes in the company status, such as mergers, sell-offs, discontinuation of equipment, addition of equipment lines and changes in the contact information of the Contract. The Contract Administrator shall be able to contact the Offeror at all times during business hours.

D. Quarterly Reporting

The Offeror shall submit a quarterly sales report directly to RFxPremier no later than thirty (30) days following the end of each quarter.

E. Administrative Fees

1. The Offeror shall pay RFxPremier, or its assignee, RFxPremier Administrative Fee of one percent (1.00%) no later than sixty (60) days following the end of each calendar quarter. The RFxPremier Administrative Fee shall be submitted quarterly and is based on all sales and services under the Master Agreement. The RFxPremier Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with the proposal.

2. Additionally, a Participating Addendum may also require payment of an additional administrative fee by Offerors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. **Unless otherwise negotiated by the Participating Entity,** Offeror may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the RFxPremier administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.

IV. LEAD ENTITY RESPONSIBILITIES AND TASKS

A. Solicitation Process Management

1. Develop, issue, and manage the Request for Proposals (RFP) in compliance with applicable procurement laws and regulations.
2. Serve as the point of contact for questions, clarifications, and any modifications during the solicitation process.
3. Ensure transparency, fairness, and competition throughout the evaluation process, working in coordination with the cooperative's governance guidelines.

B. Evaluation and Award

1. Lead the evaluation of proposals in accordance with the established criteria.
2. Coordinate evaluation committee activities, including scoring and discussions, to recommend Offerors for award to RFxPremier.
3. Notify awarded Offerors.

C. Master Agreement Oversight

1. Ensure that all agreements reflect the scope of work, deliverables, Offeror responsibilities, pricing, and service levels as outlined in the RFP.
2. Manage any amendments of the Master Agreement(s) as needed.

D. Adjustment in Pricing

The Lead Entity Contract Administrator and Sourcing Team shall review the Offeror request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead Entity Contact Administrator shall notify the Offeror their requested price or rate adjustment was approved. If rejected the Co- Lead Entity Contract Administrator shall request the Offeror to resubmit their price or rate adjustment for approval at least thirty (30) days prior to the effective date.

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E. Participating Addendum Escalation Contact
The Contract Administrator shall be the escalation contact for a Participating Entity when the Offeror fails to respond to correspondence with the Participating Entity or if an issue or problem is not resolved in a timely fashion.

V. RFxPREMIER TAKS AND RESPONSIBILITIES

A. RFxPremier will support the Lead Entity in the distribution of contract documents and information to a Participating Entity.

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MASTER AGREEMENT

This Master Agreement ("Master Agreement") is between City of Fairfax and _____, whose primary business address is _____ ("Contractor"). City of Fairfax and Contractor may each be referred to as a "Party" and collectively as "Parties."

BACKGROUND

A. City of Fairfax seeks to establish a cooperative contracting relationship with Contractor to provide goods and services to non-profit, private, and public purchasing entities.

B. This Master Agreement sets forth the terms and conditions under which Contractor will supply such goods and services to these entities through the Procurement Professionals Alliance ("PPA")/RFxPremier ("RFxP") program.

The Parties agree as follows:

I. Term of Agreement

1.1 **Effective Date.** This Master Agreement is effective upon the date of last signature.

1.2 **End Date.** This Master Agreement will continue for a period of 4 years, unless otherwise terminated by either Party in writing.

1.3 **Termination.** Either Party may terminate this Master Agreement upon breach by the other party, subject to thirty (30) days' written notice and opportunity to cure.

II. Order of Precedence

2.1 **Order.** Any order placed under this Master Agreement will consist of the following documents:

- 2.1.1 A Participating Entity's Participating Addendum ("PA") (if applicable);
- 2.1.2 A Purchase Order/Order or Scope of Work/Specifications issued against the Master Agreement;
- 2.1.3 RFxPremier Master Agreement, including all attachments thereto;
- 2.1.4 The Solicitation; and
- 2.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead Entity.

2.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead Entity and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

III. Cooperative Purchasing Mechanism

3.1 **Marketing and Administration.** Lead Entity shall administer this Master Agreement as a convenient and cost-effective contracting vehicle for use by states, territories, counties, cities, and other political subdivisions, higher

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education, K-12, healthcare, tribal, and nonprofit organizations (“Eligible Entities”).

3.2 **Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with Lead Entity and PPA/RFxP.

3.3 **Logo Use.** The PPA/RFxP logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with PPA/RFXP.

3.4 **No Representations.** The Contractor shall not make any representations concerning Lead Entity, PPA/RFxP or any nonprofit, private, or public entities purchasing under this Master Agreement (“Buyers”) as to the quality or effectiveness of the goods or services provided herein, without prior written consent.

IV. Purchasing and Contract Administration

4.1 **Goods and Services.** Contractor will provide the goods and services to Eligible Entities as set forth in Attachment 02 – Scope of Work, as attached and incorporated herein.

4.2 **Pricing.** The prices contained in Attachment 02 – Scope of Work represent the not-to-exceed price Offered by Contractor. All prices and rates must be guaranteed for the initial term of the Master Agreement.

4.3 **Shipping.** All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor.

4.3.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor’s until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor’s warranty obligations.

4.4 **Purchase Orders.** Contractor shall require all Buyers to include the following language in each purchase order: “Buyer shall hold Procurement Professionals Alliance harmless and, to the extent permitted by law, shall indemnify Procurement Professionals Alliance and RFxPremier from all third-party claims or causes of action, arising from goods and services acquired under this Purchase Order.”

4.5 **Administrative Fee.** Contractor shall pay PPA a fee for management and marketing of the Master Agreement (“Administrative Fee”) equal to one percent (1% or 0.01) of each sale of products or services under this Master Agreement no later than sixty (60) days following the end of each calendar quarter. The Administrative Fee applies to the cost of the goods and services, less any charges for taxes or shipping. The PPA/RFxP Administrative Fee is not negotiable and must be included in the overall cost provided to the Buyer and not shown as a separate line item.

4.6 **Sales Data Reporting.** Contractor shall report to PPA/RFxP all sales made under this Master Agreement which Contractor has invoiced and received payment for, including orders for personal use, if applicable (“Sales Data”).

4.6.1 **Summary Sales.** Contractor shall provide a summary of the Sales Data (“Summary Sales Data”) using a reporting tool or template provided by PPA/RFxP. Contractor shall provide PPA/RFxP with Summary Sales

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Data each calendar year quarter, no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

4.6.2 **Detailed Sales.** Within thirty (30) days following the end of each calendar year quarter, Contractor shall provide PPA/RFxP with detailed sales Data, including but not limited to customer name and address and line-item ordering detail ("Detailed Sales Data"). PPA/RFxP will work collaboratively with Contractor to determine the appropriate data and means of reporting.

V. Pricing, Payment & Leasing

5.1 **Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Buyer.

5.1.1 All prices and rates must be guaranteed for the initial term of the Master Agreement.

5.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 60 days prior to the effective date.

5.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead Entity.

5.1.4 No retroactive adjustments to prices or rates will be allowed.

5.2 **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.

5.3 **Leasing or Alternative Financing Methods**. The procurement and other applicable laws of some Buyers may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum or Order, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Buyer.

VI. Inspection and Acceptance

6.1 **Laws and Regulations.** All Products must comply with applicable federal, state, and local laws and regulations.

6.2 **Applicability.** Unless otherwise stated in the Master Agreement, Participating Addendum, or ordering document, this Section applies and does not limit rights under applicable commercial codes.

6.3 **Inspection.** Products are subject to inspection before Acceptance at reasonable times and places. The Buyer and authorized agents may access the Contractor's facilities as needed to monitor performance and compliance.

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6.3.1 Products failing to meet specifications may be rejected. Acceptance does not waive rights for material or latent defects later discovered. Acceptance may be revoked in accordance with commercial code provisions. Contractor is responsible for costs related to rejected or revoked goods.

6.4 **Failure to Conform.** If services fail to meet contract requirements, Buyer may require re-performance at no cost. If not correctable, Buyer may require corrective action and a price reduction to reflect diminished value.

6.5 **Acceptance Testing.** Buyer may conduct Acceptance Testing in accordance with industry standards.

6.5.1 The testing period is 30 calendar days from delivery or installation and Contractor's notice of readiness.

6.5.2 If the Product does not meet required performance, Buyer may extend testing on a day-to-day basis.

6.5.3 If rejected, Contractor has 15 calendar days to cure. If still nonconforming, Buyer may (a) terminate the Order, (b) demand a replacement at no cost, or (c) extend the cure period by agreement.

6.5.4 Contractor is responsible for return shipping and related costs.

6.5.5 No Product is deemed Accepted or payable until it meets all performance standards.

VII. Product Title

7.1 **Conveyance of Title.** Upon Acceptance by the Buyer, Contractor shall convey to Buyer title to the Product free and clear of all liens, encumbrances, or other security interests.

VIII. Indemnification

8.1 **General Indemnification.** The Contractor shall defend, indemnify and hold harmless Lead Entity, PPA, and RFxP along with their officers and employees, from and against any third-party claims, damages, or causes of action, including reasonable attorneys' fees and related costs, for any death, injury, or damage to tangible property arising from the sale or use of any product or service sold under this Master Agreement.

I. Insurance

8.2 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Buyer may negotiate alternative Insurance requirements in their Order.

8.3 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Buyer's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Buyer's option, result in termination of its Order.

8.4 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

8.4.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a

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limit of not less than $1 million per occurrence and $2 million general aggregate;

8.4.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

8.5 **Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Buyer within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

8.6 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead Entity a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead Entity that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Buyer as secondary and noncontributory.

8.7 **Participating Entities.** Contractor shall provide to Buyers the same insurance obligations and documentation as those specified in this Section IX, except the endorsement is provided to the applicable Buyer.

8.8 **Furnishing of Certificates.** Contractor shall furnish to the Lead Entity copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable Buyer. Failure to provide evidence of coverage may, at the sole option of the Lead Entity, or any Buyer, result in this Master Agreement's termination or the termination of any Order.

8.9 **Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

IX. General Provisions

9.1 **Confidentiality.** Parties may have access to information that is confidential, proprietary, or trade secret, including information provided by the other Party, as well as by Buyers, which may also include information on individuals ("Confidential Information"). Parties acknowledge that any unauthorized disclosure or use of the Confidential Information may cause irreparable harm and loss to the disclosing party or other individuals. Therefore, Parties shall (a) use Confidential Information for the sole purpose of performing under this Agreement, (b) limit dissemination of Confidential Information to only those employees and representatives who have a need to know the Confidential Information, and (c) not disclose the Confidential Information to any other person or entity without the approval of disclosing Party or Buyer, if applicable.

9.2 **Records Administration and Audit**. Contractor shall maintain detailed records related to performance, payments, and fees under this Master Agreement and any Buyer orders. Contractor shall provide access to the Lead Entity, any Buyer, the federal government (including grant awarding agencies and the U.S. Comptroller General), and other authorized government agents to audit, inspect, copy, or examine records directly related to this Agreement or any order. This audit right will remain in effect for six (6) years after termination of the Agreement

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or final payment, whichever is later, or longer if required by applicable state law, to ensure contract compliance and performance evaluation.

9.3 **Amendments.** This Agreement may only be amended or modified in writing upon agreement by both Parties.

9.4 **Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party.

9.5 **Notice.** All notices concerning enforcement, modification, amendment, interpretation, or dispute resolution of this Agreement must be in writing and be delivered to the other Party's signatory to this Agreement.

9.6 **Dispute Resolution.** In the event of a dispute concerning this Agreement, Parties shall attempt to resolve the dispute in good faith through non-binding meditation prior to any formal legal action.

9.7 **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable, the remainder of this Agreement will not be affected and will be enforced to the greatest extent permitted by law.

9.8 **Waiver.** The waiver of either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or other provisions.

9.9 **Governing Law, Jurisdiction, and Venue.** Any claim or cause of action must be brought in a court of competent jurisdiction within the Commonwealth of Virginia, City of Fairfax, and will be subject to Virginia law, without regard to its choice of law provisions.

9.10 **Survivability.** Sections 4.5, 4.6, 8.1, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, and 9.9 will survive expiration or termination of this Agreement.

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The Parties accept the terms of this Agreement as of the dates set forth below.

For City of Fairfax:

Name
Title

Signature: _____ Date: _____

For Contractor:

Name
Title

Signature: _____ Date: _____

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Attachment 13 – Appendix A

GENERAL TERMS AND CONDITIONS

BIDDERS WILL BE BOUND TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN APPENDIX A, GENERAL TERMS AND CONDITIONS. BIDDERS SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS IN A SOLICITATION. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for purchasing goods, services, and construction, as established in the Fairfax City Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. Unless specifically delegated by the Purchasing Agent, no other city officer or employee is authorized engage in solicitation or award of contracts, or in any way obligate the City of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the city.

2. **DEFINITIONS**-

   BID: A competitively priced offer made by an intended seller, usually in reply to an Invitation for Bids (IFB).

   BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the City. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

   CONTRACTOR: An individual or firm that has entered into an agreement to provide goods or services to the City.

   INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the City. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

   REQUEST FOR PROPOSAL (RFP): A solicitation that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the general terms and conditions, plus any special conditions including unique capabilities or qualifications that will be required. The RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids.

   SOLICITATION: The process of notifying prospective bidders that the City wishes to receive bids on a set of requirements to provide goods or services through the methods of competitive sourcing established in the Fairfax City Purchasing Resolution.

CONDITIONS OF BIDDING

3. **BID FORMS-**Unless otherwise specified in the solicitation, all bids must be submitted on the forms provided by the City in the means identified in the solicitation.

4. **LATE BIDS & MODIFICATIONS OF BIDS**-
   a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.

   b. If an emergency, unanticipated event, or closing of City offices interrupts or suspends normal City business operations, then bids will be due at the same time of day specified in the solicitation on the first work day that normal City business operations resume.

5. **WITHDRAWAL OF BIDS**- Bids shall be withdrawn only as set forth in the Fairfax City Purchasing Resolution.

6. **ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.

7. **ACCEPTANCE OF BIDS/BINDING 90 DAYS**-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

8. **CONDITIONAL BIDS**-Conditional bids may be rejected in whole or in part.

9. **BIDS FOR ALL OR PART**-The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the City. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

10. **OMISSIONS & DISCREPANCIES**-Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the City; or (ii) are omitted by the City from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

    If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

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11. **BIDDER INTERESTED IN MORE THAN ONE BID**-If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

12. **TAX EXEMPTION**-The City is exempt from the payment of any federal excise or any Virginia sales tax.

13. **PROHIBITION AGAINST UNIFORM PRICING**-The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax City Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

14. **UNBALANCED BIDS—**A bid shall be mathematically unbalanced if the bid contains unit pricing that does not reflect reasonable costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced bid will result in the lowest ultimate cost to the City. A bid that is, in the sole discretion of the City Purchasing Agent, both mathematically and materially unbalanced, may be rejected as non-responsive.

SPECIFICATIONS

15. **CLARIFICATION OF TERMS—**If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only be addendum issued by the contract specialist.

16. **BRAND NAME OR EQUAL ITEMS**-Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the City in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the City to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.

17. **SPECIFICATIONS**-When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification. The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings.

AWARD

18. **AWARD OR REJECTION OF BIDS**-The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the City to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the City. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax City. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

19. In determining the responsibility of a bidder, the following criteria will be considered:
    a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
    b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
    c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
    d. The quality of performance of previous contracts or services;
    e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
    f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
    g. The quality, availability and adaptability of the goods or services to the particular use required;
    h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
    i. Whether the bidder is in arrears to the City on debt or contract or is a defaulter on surety to the City; and
    j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

20. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS**-A written award mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
    a. Fairfax City solicitation
    b. General Terms and Conditions
    c. Special Provisions and Specifications
    d. Pricing Schedule
    e. Any Addenda

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21. **TIE-BIDS** – In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid, the provision of Fairfax City Purchasing Resolution Section 7 shall apply.

22. **PROMPT PAYMENT DISCOUNT**-

    a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
    b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
    c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

    For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the City check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

23. **INSPECTION-ACCEPTANCE**- Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

CONTRACT PROVISIONS

24. **TERMINATION OF CONTRACTS**-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

    a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the City for Convenience or Cause.

    b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

25. **TERMINATION FOR CONVENIENCE**-A contract may be terminated in whole or in part by the City in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

26. **TERMINATION OF CONTRACT FOR CAUSE**-

    a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the City shall have the right to terminate the contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

    b. Termination of the Contract for Cause does not relieve the Contractor of liability to the City for damages sustained by the City by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the City from the Contractor is determined.

27. **CONTRACT ALTERATIONS**-No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the Purchasing Agent or her authorized agent.

28. **SUBLETTING OR ASSIGNMENT** -It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.

29. **FUNDING**- 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 contract is subject to appropriations by the Fairfax City Council to satisfy payment of such obligations. The 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 non-appropriation of funds within thirty (30) calendar days after action is completed by the City Council. However, the City's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

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30. **DELIVERY/SERVICE FAILURES**-If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the City, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

31. **NON-LIABILITY**-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at their discretion terminate the contract.

32. **ANTI-DISCRIMINATION**-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 other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary 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 non-discrimination clause.
    b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such 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 include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

33. **NONDISCRIMINATION OF CONTRACTORS:**
A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless City has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

34. **GUARANTEES & WARRANTIES**-All guarantees, and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.

35. **PRICE REDUCTION**-If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction 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, or retailers), which was used as the basis for bidding on this solicitation.

36. **CHANGES**-If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

    No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

37. **PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor by PO or Procurement Card (P- Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering department.

DELIVERY PROVISIONS

38. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED**-Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the City. The Contractor bears all risk of loss 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 its risk and expense or dispose of them as the City's own property.

39. **INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the City will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or

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supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the City for such materials or supplies as are not in accordance with the specifications.

40. **COMPLIANCE**-Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the City, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.

41. **POINT OF DESTINATION**-All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order. Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

42. **REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the City.

43. **PACKING SLIPS OR DELIVERY TICKETS**-All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:

    a. The Purchase Order Number,
    b. The Name of the Article and Stock Number (Supplier's),
    c. The Quantity Ordered,
    d. The Quantity Shipped,
    e. The Quantity Back Ordered,
    f. The Name of the Contractor.

    Contractors are cautioned that failure to comply with these conditions is sufficient reason for the City's refusal to accept the goods.

BILLING

44. **BILLING**- Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

45. **PAYMENT**-Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.

46. **PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

GENERAL

47. **GENERAL GUARANTY**-Contractor agrees to:

    a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
    b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the City the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
    c. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
    d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
    e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the City.
    f. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

48. **SERVICE CONTRACT GUARANTY**-Contractor agrees to:

    a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the City may reduce the said services at any time.
    b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
    c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.

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d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
e. Any omission or failure on the part of the inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

49. **INDEMNIFICATION**-

a. General Indemnification. Contractor agrees to indemnify the City of Fairfax, its officers, agents, and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the city or to failure of the city to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

b. Intellectual Property Indemnification. In addition to the General Indemnification, Contractor will indemnify the City for and defend the City against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the City for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

c. Right to Participate in Defense. The City may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the City to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the City's prior written consent before entering into such settlement or resolution.

d. No Indemnification by the City. The parties agree that under applicable law the City cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the City, that promise or term is stricken from this Contract and of no effect.

50. **OFFICIALS NOT TO BENEFIT** ; Each bidder, offeror, or contractor shall certify, upon signing a bid, proposal, or contract, that to the best of their knowledge no Fairfax City official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

51. **LICENSE REQUIREMENT**-All firms doing business in Fairfax City, shall obtain a license as required by City of Fairfax, Virginia, ordinance.

52. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth 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. Any business entity described above that enters into a contract with a Fairfax City pursuant to the Fairfax City Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

63. **COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

64. **VIRGINIA FREEDOM OF INFORMATION ACT**-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the City decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the City decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i)

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invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

d. Nothing contained in this section shall be construed to require the City, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the City.

e. The City cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).

f. A bidder or offeror shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

BIDDER/CONTRACTOR REMEDIES

65. INELIGIBILITY-

a. Any person or firm refused permission to participate, or disqualified from participation in City procurement shall be notified in writing by the Purchasing Agent. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice in accordance with Code of Virginia §2.2-4357.

b. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

c. If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

d. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

66. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5, of the Fairfax City Purchasing Resolution, prior to appealing, shall deliver to the City a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

67. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular City contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.

b. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

c. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

d. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by instituting legal action as provided in § 2.2-4364.

e. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 2.2-4360.

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f. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

g. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular City contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the City contract in question. Where the award has been made and performance has begun, the City may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

68. PROTEST OF AWARD OR DECISION TO AWARD-

a. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Purchasing Agent, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

b. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

c. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

d. Where a public body, an official designated by that public body, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of § 2.2-4367 et seq., the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

69. CONTRACTUAL DISPUTES-

a. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

c. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

d. A contractor may not institute legal action as provided in § 2.2-4364, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

e. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

70. **LEGAL ACTION-**No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

71. **VENUE:** This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than

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those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax City, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

72. **DRUG FREE WORKPLACE-**During the performance of a 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 a controlled substance or marijuana 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 of over $10,000, 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 conjunction with a specific contract awarded to a Contractor in accordance with this section, 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.

73. **IMMIGRATION REFORM AND CONTROL ACT-**Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

74. **AUDIT OF RECORDS** The parties agree that the City or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term “records” includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.

75. **NONVISUAL ACCESS-**All information technology, which is purchased or upgraded by the City under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:

    a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
    b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
    c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
    d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
    e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Brian Lubkeman ***CITY ATTORNEY*** ***3-17-2025***

/S/ Patricia Innocenti ***CITY PURCHASING AGENT***