

**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**CONTRACT TO PROVIDE REFUSE  
TRUCK RENTALS AND RELATED PRODUCTS AND SERVICES**

This Contract (the "Contract") is entered into as of this 1st day of November, 2018 (the "Effective Date"), by and between Big Truck Rental LLC, a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

**RECITALS**

**WHEREAS**, the City issued a Request For Proposals (RFP # 269-2018-047) for Equipment Rentals and Related Products and Services dated May 22, 2018. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

**WHEREAS**, the Company submitted a Proposal in response to RFP # 269-2018-047 on June 26, 2018. This Proposal, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."

**WHEREAS**, the City awarded this Contract on September 24, 2018 to Company to provide Refuse Truck Rentals and Related Products and Services to the City all in accordance with the terms and conditions set forth herein.

**WHEREAS**, the City of Charlotte, on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies"), competitively solicited and awarded the Contract to the Company. The City has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Contract to Participating Public Agencies.

The City is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company (including its subsidiaries) shall deal directly with each PPA concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such PPA's access to the Contract.

Each PPA enters into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA) outlining the terms and conditions that allow access to the Lead Public Agencies' Master Agreements. Under the terms of the MICPA, the procurement by the PPA shall be construed to be in accordance with, and governed by, the laws of the state in which the PPA resides.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

## CONTRACT

### 1. EXHIBITS.

The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to Big Truck Rental in the Exhibits and Appendices shall be deemed to mean the Company.

- 1.1. EXHIBIT A: Discount Schedule, Additional Fees and Incentives
- 1.2. EXHIBIT B: Scope of Services
- 1.3. EXHIBIT C: Federal Contract Terms and Conditions

### 2. DEFINITIONS.

This section may include, but not be limited to, terms defined in Section 1 of the RFP.

- 3. **TERM.** The initial term of this Contract will be for five (5) years from the Effective Date with an option to renew for two (2) additional two-year terms. This Contract may be extended only by a written amendment to the contract signed by both parties.

### 4. AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.

4.1 The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits when ordered from time to time by the City. Except as set forth in Exhibit A, the prices set forth in Exhibit A constitute all not to exceed charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services. The Company shall perform any Services for the City on site at the City's facilities in Charlotte, North Carolina, except as otherwise stated in this Contract or agreed in writing by the City.

4.2 Placement of Orders: All orders will be placed by personnel designated by the City on an as needed basis for the quantity required at the time during the term of the Contract.

- 5. **OPTIONS AND ACCESSORIES:** The City may in its discretion purchase from the Company options and Services beyond what is called for in the Scope of Work, provided that such purchase does not create unfairness so as to defeat the purpose of the bid statutes, and provided the City is authorized by law to make such purchases without a formal bid process.

- 6. **DOCUMENTATION:** the Company will provide for all products purchased under this contract written or electronic documentation that is complete and accurate, and sufficient to enable city employees with ordinary skills and experience to utilize such products for the purpose for which the city is acquiring them.

- 7. **COMPENSATION.** The City shall pay the company for the products and services delivered in compliance with the specifications at the prices set forth in Exhibit A. This amount constitutes the maximum fees and charges payable to the company in the aggregate under this contract and will not be increased except by a written amendment duly executed

by both parties in compliance with the price adjustment provisions set forth in Section 8. The company shall not be entitled to charge the city any prices, fees or other amounts that are not listed in Exhibit A.

**8. PRICE ADJUSTMENT.**

- 8.1 The price(s) stated in this Contract shall not increase for the first year of the five-year term of the Contract. The prices shall also not increase during the two, two-year renewal option terms unless the City approves a price adjustment in writing in accordance with the following terms:
- 8.1.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.
- 8.1.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Management Division representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.
- City of Charlotte  
Finance - Procurement Management  
600 East Fourth Street  
Charlotte, NC 28202
- 8.1.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.
- 8.1.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.
- 8.2 If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the City with prompt written notice of all decreases in unit prices.
- 8.3 If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to bid statute requirements. The City may also delete radio and communication equipment items included in this Contract if items are no longer needed or no longer issued as part of radios and communication equipment. At no additional cost to the City, the

Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.

9. **BILLING.** Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send one (1) copy only of each invoice using one of the following options:

Option 1 – E-mail one copy of each invoice to [cocap@charlottenc.gov](mailto:cocap@charlottenc.gov) . Company shall not mail invoices that have been sent via e-mail.

Option 2 – Mail one copy of each invoice to:

City of Charlotte Accounts Payable

PO Box 37979

Charlotte, NC 28237-7979

Attn: (Insert Department)

The City is not tax exempt from sales tax. The Company shall include all applicable State and County sales taxes on the invoice and not combined with the cost of the goods.

Payment of invoices shall be due within thirty (30) days after the City has received all of the following: (a) an accurate, properly submitted invoice, (b) all reports due for the month covered by the invoice; and (c) any other information reasonably requested by the City to verify the charges contained in the invoice. Invoices must include state and local sales tax.

10. **CONTRACT MONITORING:** The City shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the City deems appropriate. Unless the City elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the City within thirty (30) days of notification of non-compliance.
11. **REPORTING:** The Company shall provide such written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in the Specifications.
12. **AUDIT:** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
13. **GENERAL WARRANTIES.** Company represents and warrants that:
- 13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Florida, and is qualified to do business in North Carolina;
- 13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;

- 13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;
  - 13.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
  - 13.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
  - 13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.
- 14. ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Company represents warrants and covenants that:
- 14.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
  - 14.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
  - 14.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
  - 14.4 The Company and each of its subcontractors have complied and shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the products and services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.
- 15. COMPLIANCE WITH LAWS:** All Products and Services delivered under this Contract shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.
- 16. DELIVERY TIME:** When delivery time is requested in the ITB, (whether in the form of a specific delivery date or maximum number of days for delivery) time is of the essence. The Company's Bid shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.
- 17. QUALITY:** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.

Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be

minimum requirements that are in addition to any other requirements that may be stated in this Contract.

18. **DESIGN AND/OR MANUFACTURER REQUIREMENT:** All Products and Services shall meet the Specifications set forth in Section 4 of the **RFP**.
19. **INSPECTION AT COMPANY'S SITE:** The City reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).
20. **PREPARATION FOR DELIVERY:**
  - 20.1 **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
  - 20.2 **Marking.** All cartons shall be clearly identified with the City purchase order number and the name of the department making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc).
  - 20.3 **Shipping.** The Company shall follow all shipping instructions included in the ITB, the City's purchase order or in the Contract.
21. **ACCEPTANCE OF PRODUCTS/SERVICES:** The Products shall be deemed to be accepted by the City upon delivery and subject to the terms and conditions of this Contract if City does not notify Company in writing within 48 hours of delivery of the Products of any problem with the Products. Contract shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.
22. **GUARANTEE:** Unless otherwise specified by the City, the Company unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.

23. **NO LIENS:** The equipment is owned by Company. City acknowledges that no one other than Company may transfer the equipment or any rights or obligations under the rental documentation. Neither City nor any operators are agents of Company. No one may perform major service, repair, or alter the equipment without Company's prior written approval except for emergencies, which threaten life or property. City will not suffer any liens or encumbrances to attach to the equipment and will compensate the Company for any out of pocket costs paid by the Company to remove such liens or encumbrances.
24. **MANUFACTURER OR DEALER ADVERTISEMENT:** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.
25. **RIGHT TO COVER:** If the Company fails to comply with any term or condition of the Contract or the Company's response to the ITB, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party.
26. **RIGHT TO WITHHOLD PAYMENT:** If Company breaches any provision of the Contract, the City shall have the right to withhold all payments due to the Company until such breach has been fully cured.
27. **OTHER REMEDIES:** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
28. **TERMINATION.**
- 28.1 **TERMINATION WITHOUT CAUSE.** The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.
- 28.2 **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:
- 28.2.1 The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- 28.2.2 The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
- 28.2.3 The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract **shall continue**), or if a

receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Contract if the default is not cured within the specified period.

- 28.3 ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY. By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
- 28.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- 28.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 28.4 NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS. Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 28.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION. Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.
- 28.6 NO SUSPENSION. In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 28.7 AUTHORITY TO TERMINATE. The City Manager or their designee is authorized to terminate this Contract on behalf of the City.
- 28.8 TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole



discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:

- 28.8.1 Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
  - 28.8.2 Notifying all affected vendors and subcontractors of the Company of transition activities;
  - 28.8.3 Performing the transition service plan activities;
  - 28.8.4 Answering questions regarding the products and services on an as-needed basis; and
  - 28.8.5 Providing such other reasonable services needed to effectuate an orderly transition to a new system.
29. **NO DELAY DAMAGES:** Under no circumstances shall the City be liable to the successful Bidder for any damages arising from delay, whether caused by the City or not.
30. **MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The City reserves the right to award multiple contracts for the Products and Services required by this Contract if the City deems multiple Contracts to be in the City's best interest.
31. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.
32. **Indemnification:** To the fullest extent permitted by law, the City will defend, indemnify and hold harmless Company, its subsidiaries, parent company and its and their officers, agents and employees, from and against all loss, liability, claim, action or expense, by reason of bodily injury, including death, and property damage, sustained by any person or persons, including but not limited to employees of City, as a direct result of City's negligence or intentional misconduct in its maintenance, use, possession, storage, operation, erection, dismantling, servicing or transportation of the equipment.

City must return the equipment to Company in the same good and clean condition it was in when City received it, ordinary wear excepted. The condition of the vehicle pre and post rental will be evaluated through Company's standard process using Company's check-in application. Consumables such as tire wear will be billed per Company's rental agreement. The location for rental and return will be determined during the quoting process with the corresponding transportation cost. City acknowledges that it must confirm return receipt of the equipment by Company at the time the equipment is returned. Until such time as Company receives actual possession of the equipment, City agrees to hold said equipment in a safe and secure manner. City shall notify the renting branch by telephone or fax, prior to any equipment movements between City's job sites. The equipment will be used only in accordance with the manufacturer's instructions within its rated capacity.

City will promptly notify Company of any accident, damage or failure involving the equipment and will reasonably cooperate with Company in gathering information in connection therewith. City will perform or cause to be performed lubrication and readiness checks of the equipment, including but not limited to: checking of the equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressure and battery fluid and charge levels weekly. If the equipment fails to operate properly or becomes in need of repair, City will immediately cease using same and will immediately notify Company. Company's transportation providers will deliver the trucks with a minimum quarter tank of fuel with the expectation of a minimum quarter tank of fuel for the return.

- 33. INSURANCE.** Throughout the term of the Contract, the City shall comply with the insurance requirements described in this Section. In the event the City fails to procure and maintain each type of insurance required by this Section, or in the event the City fails to provide the Company with the required certificates of insurance, the Company shall be entitled to terminate the Contract immediately upon written notice to the City. The City agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

- a) Until all of Customer's obligations under this Master Agreement and all corresponding Supplemental Agreements and Extension Agreements have been paid and performed in full, Customer will, at its sole cost and expense, maintain in force and effect an insurance policy of public liability and property damage with bodily injury and death liability limits of not less than \$1,000,000 per occurrence and in the aggregate and property damage liability limits of at least \$1,000,000 on a primary and not excess or contributory basis against its liability for damages sustained by any person or persons as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of all Vehicles rented hereunder; but, in any event, the amount and terms of the insurance will be such that no insured under the policy will be a co-insurer of any of the risks covered by the policy. The coverage may have only such exceptions as Big Truck Rental approves in writing. The insurance will be maintained only with insurers which are licensed in the state or states in which the Vehicles will be operated and which are rated not lower than "A" in Best's Insurance Reports ("Best's") with a Financial Category Size of at least "XII" in Best's ("Approved Insurers"). Big Truck Rental will be the sole loss payee under the insurance.

On the execution of this Master Agreement and at any other time on request by Big Truck Rental, Customer will furnish Big Truck Rental with a evidence of coverage confirming that the insurance coverage required under this Section is maintained and in full force and effect, and upon Big Truck Rental's request shall provide Big Truck Rental with a true and correct copy of the policy in effect.

- b) Commercial General Liability: Bodily injury and property damage liability as shall protect the successful Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the Company, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or

\$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.

- c) Workers' Compensation: Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The City shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees, as defined in Section 5.1.

The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the City with proof of insurance coverage by certificates of insurance accompanying the Contract.

Certificates of all required insurance shall contain the provision that the City will be given (30) days written notice of any intent to amend or terminate by either the insured or the insuring company. All insurance certificates must include the City of Charlotte's contract number in the description field.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

#### **34. COMMERCIAL NON-DISCRIMINATION.**

As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be

requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

35. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.
36. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the City when on the city's premises.
37. **BACKGROUND CHECKS:** The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:
  - a. Criminal records search,
  - b. Identification verification; and
  - c. Proof of authorization to work in the United States.

The Company agrees if any personnel does not meet the background qualifications, he/she shall not be assigned to perform services under this Contract. The Company will notify the City immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the City immediately.

38. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:

- 38.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
- 38.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- 38.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 38.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 38.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 38.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Contract shall be ground for suspension, termination or debarment.

**39. NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

<b>For The Company:</b>	<b>For The City:</b>
Zack Martin	Karen Ewing
Big Truck Rental.	Procurement Management Division
5001 W. Lemon Street	600 East Fourth Street
Tampa, FL 33609	Charlotte, NC 28202
Phone: 813-261-0820	Phone: 704-336-2992
Fax: 813-261-0621	Fax: 704-632-8254
E-mail: zach@bigtruckrental.com	E-mail: kewing@charlottenc.gov
<b>With Copy To:</b>	<b>With Copy To:</b>
	Cindy White
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202

	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: cwhite@ci.charlotte.nc.us

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

**40. SUBCONTRACTING:** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

**41. FORCE MAJEURE:** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

If such failure or delay:

- A. could not have been prevented by reasonable precaution;
- B. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- C. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Contract by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the successful Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

**42 CONFIDENTIALITY.**

**42.1 DEFINITIONS.** As used in this Contract, The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry that is obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:

- 42.1.1 Trade secrets. For purposes of this Contract, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 42.1.2 Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
- 42.1.3 Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 42.1.4 Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 42.1.5 Citizen or employee social security numbers collected by the City.
- 42.1.6 Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 42.1.7 Local tax records of the City that contains information about a taxpayer's income or receipts.
- 42.1.8 Any attorney / client privileged information disclosed by either party.
- 42.1.9 Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
- 42.1.10 The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.
- 42.1.11 Building plans of city-owned buildings or structures, as well as any detailed security plans.
- 42.1.12 Billing information of customers compiled and maintained in connection with the City providing utility services
- 42.1.13 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 42.1.3 through 42.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

- 42.2 RESTRICTIONS. Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
- 42.2.1 Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
  - 42.2.2 Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
  - 42.2.3 Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
  - 42.2.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
  - 42.2.5 Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
  - 42.2.6 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
  - 42.2.7 All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
  - 42.2.8 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
  - 42.2.9 Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors,



subcontractors, employees and taxpayers the same level of protection as provided by this Contract.

42.3 EXCEPTIONS. The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:

- 42.3.1 Was already known to Company prior to being disclosed by the City;
- 42.3.2 Was or becomes publicly known through no wrongful act of Company;
- 42.3.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
- 42.3.4 Was used or disclosed by Company with the prior written authorization of the City;
- 42.3.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
- 42.3.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

#### 43 MISCELLANEOUS

- 43.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract
- 43.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.
- 43.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 43.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 42.8 constitutes an assignment.

- 43.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 43.6 NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 43.7 WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 43.8 CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 43.9 NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 43.10 FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 43.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.
- 43.12 SURVIVAL OF PROVISIONS: Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the

termination of the Contract shall survive the termination of the Contract, including but not limited to the following:

- Section 3 "Term"
- Section 13 "General Warranties"
- Section 14 "Additional Representations and Warranties"
- Section 22 "Guarantee"
- Section 27 "Other Remedies"
- Section 28 "Termination"
- Section 32 "Indemnification"
- Section 33 "Insurance"
- Section 39 "Notices"
- Section 43 "Confidentiality"
- Section 44 "Miscellaneous"

- 43.13 **NON-APPROPRIATION OF FUNDS.** If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
- 43.14 **NC REQUIRED TERMS.** The following terms are incorporated into this Contract for compliance with state law:
  - 43.14.1 **E-VERIFY.** Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
  - 43.14.2 **NC Prohibition on Contracts with Company that Invest in Iran or Boycott Israel.** Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing this Contract Company further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to Company appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.
- 43.15 **PRE-AUDIT.** No pre-audit certificate is required under N.C. Gen. Stat. 159-28(a) because this Contract is for an indefinite quantity with no minimum purchase

requirement. Notwithstanding anything contained herein to the contrary, this Contract does not require the City to purchase a single product or service, and a decision by the City to not make any purchase hereunder will violate neither this Contract nor any implied duty of good faith and fair dealing. The City has no financial obligation under this Contract absent the City's execution of a valid and binding purchase order or contract addendum containing a pre-audit certificate."

- 44. CITY'S RESPONSIBILITIES.** City must return the equipment to Company in the same good and clean condition it was in when City received it, ordinary wear excepted. The equipment must be returned to Company at the Company branch from which it was rented. City acknowledges that it must confirm return receipt of the equipment by Company at the time the equipment is returned. Until such time as Company receives actual possession of the equipment, City agrees to hold said equipment in a safe and secure manner. City shall notify the renting branch by telephone or fax, prior to any equipment movements between City's job sites. The equipment will be used only in accordance with the manufacturer's instructions within its rated capacity.

City will promptly notify Company of any accident, damage or failure involving the equipment and will reasonably cooperate with Company in gathering information in connection therewith. City will perform or cause to be performed lubrication and readiness checks of the equipment, including but not limited to: checking of the equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking tire pressure and battery fluid and charge levels weekly. If the equipment fails to operate properly or becomes in need of repair, City will immediately cease using same and will immediately notify Company. City further agrees, at City's sole cost and expense, to secure and maintain in force during the entire term of the Rental Documentation insurance that meets the requirements set forth herein for the benefit of Company.

Company agrees to provide the equipment to City with a minimum of one-fourth (1/4) tank of fuel. City will be responsible for returning the equipment with the same fuel level as the equipment had when the City received the equipment. If City returns the equipment with the fuel tank(s) less than one-fourth of a tank full, City will pay to Company a sum equal to Company's then-applicable refueling service charge posted at the Company branch where the equipment is returned for the number of gallons required to refill the tank(s) at the time of return.

- 45. RISK OF LOSS:** All loss of or damage to the equipment, unless such loss or damage results from a latent defect(s) or fault or negligence on the part of Company, while on rental and in City's care, custody or control, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the responsibility of City and will be paid to Company promptly upon City's receipt of an uncontested, itemized invoice therefor. Such responsibility is limited to: (1) reasonable repair cost; or, (2) the fair market value of the equipment at the time it is lost or damaged, less its salvage value. The cost of labor for such repairs will be either supplier's then prevailing reasonable hourly rate for labor, posted at the supplier branch where the equipment is to be repaired, or the repairer's reasonable hourly rate for labor charged to supplier for such repairs, as the case may be. Parts will be charged to City at Company's cost as reasonably charged to Company by the supplier or repairer, as the case may be. Use of the equipment by persons other than as provided for herein will be at City's sole risk. City and any Authorized Operator hereby

assume all risk of loss or damage and waive all claims against Company by reason of any property left, or stored, by City or any other person in or upon the equipment.

46. **LIMITATION OF LIABILITY:** the parties agree that the maximum liability to which either party may be liable or responsible to the other party or any third party for any loss, damage or injury caused by, resulting from or in any way connected with the equipment and/or this contract shall be the total rental charges paid or payable by city under this contract. Both parties waive any and all consequential, indirect, special and punitive damages. This limitation of liability shall not apply to either party's indemnification obligations hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

COMPANY: **BIG TRUCK RENTAL LLC**

BY: *Mike Z*

PRINT NAME: Mike Zukusky

TITLE: CEO

DATE: 9/18/18

CITY OF CHARLOTTE:  
CITY MANAGER'S OFFICE

BY: *Sabrina Joy Hogg*

PRINT NAME: Sabrina Joy Hogg

TITLE: Deputy City Manager

DATE: 9/28/18

CITY OF CHARLOTTE:  
RISK MANAGEMENT DIVISION

BY: *Christlee Gibson*

PRINT NAME: Christlee Gibson

TITLE: Insurance Manager

DATE: 9/27/18

**Exhibit A**  
**Discount Structure and Additional Fees**

This Discount Structure, Market Basket Pricing, and Additional Fees are an Exhibit to and is incorporated into the Contract between the City of Charlotte and Big Truck Rental (“the Contract”). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

Company must maintain the following fixed percentage discounts off the Company’s most current published price list for the life of the Contract. All charges by the Company to the City and/or any Participating Public Agency must not exceed the pricing included in this Exhibit.

**RFP #269-2018-047 - HEAVY DUTY RENTAL AND RELATED PRODUCTS AND SERVICES**  
**Leasing Options and Pricing Structure**

PLEASE PROVIDE YOUR PURCHASE OPTIONS AND PRICING FOR ALL EQUIPMENT

Big Truck Rental offers a rent to purchase program. The customer and Big Truck Rental agree to a purchase price(see below) on the vehicle and 25% of all paid rentals can be applied to the purchase price of the vehicle. The minimum rental period on the program is 6 months with a maximum of 18 months. This program rental rate is the monthly rate as proposed in the market basket.

Big Truck Rental also markets/sells our off-rent trucks that typically range in 1.5-2 years in age. Big Truck Rental will offer the City of Charlotte and U.S. Communities members a 1% discount off of the standard retail price of the vehicle.



## **Exhibit B Scope of Services**

This Scope of Services is an Exhibit to and is incorporated into the Contract between the City of Charlotte ("City") and Big Truck Rental ("the Contract"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract.

### **2.1 General Scope**

The Company shall provide Refuse Truck Rentals and Related Products and Services to the City and Participating Public Agencies ("PPA") that elect to use this Contract.

Participating Public Agencies may have additional specific requirements that might not be a requirement of the City. The Company agrees to provide additional information or documentation to Participating Public Agencies as may be required per the Master Intergovernmental Cooperative Purchasing Agreement (between the City and the PPA). The Company agrees to comply with additional state, or local laws and policies of the individual Participating Public Agencies.

### **2.2 Product Standards and Service Level Requirements**

All Products offered must be the latest design and technology. It is essential that all Equipment Rentals and Related Products and Services be in compliance with all current and applicable ASTM Standards and other applicable laws and regulations in the state of North Carolina or in accordance with the laws and applicable purchasing policies of the State and locality where the Participating Public Agencies exists.

**2.2.1** Any equipment rented shall be guaranteed to be fully functional and capable of performing the task(s) it was designed to perform under the manufacturer's guidelines. All safety equipment and all associated attachments shall be in place and functioning per the manufacturer's design. Any equipment not functioning properly, or becoming non-functional during operation, shall be picked up and repaired or replaced by the Company at no additional charge to the PPA during the rental period. Routing repairs not caused by misuse of the equipment shall be provided at no additional cost to the PPA.

**2.2.2** At the time the PPA takes possession of the equipment, the Company shall provide information regarding current condition and any visual, pre-existing damage to the equipment. The Company and the PPA will review the equipment condition at the point of delivery as well as at the point of return. No rental fees shall be charged to a PPA without the signed receipt of acceptance of the equipment.

**2.2.3** The proposal response shall include a sample of any service agreement or contract that the PPA will be required to sign. The service Agreement shall clearly indicate and describe any and all charges that will be assessed at time of rental. Documents produced for signature after an award is made, which were not submitted with the proposal response, will not be considered or made part of any Contract that results from this solicitation.

**2.2.4** At the time of any rental of equipment under the terms of the resulting Contract, PPA representatives may sign the Company's standard Rental Agreement/Delivery Ticket as evidence of receipt of the equipment. PPA

representatives accepting equipment will not be authorized to obligate or bind the respective agency to contractual terms and conditions; therefore, signature on a Rental Agreement/Delivery Ticket is solely an acknowledgement of receipt of the equipment. Any pre-printed terms on the Rental Agreement/Delivery Ticket shall govern the rental transaction only to the extent the terms are not in addition to, or in conflict of, the terms of the Master Agreement which shall govern all transactions between parties.

**2.3 Price Adjustments.**

All proposed pricing shall remain firm for the first year of the subsequent Contract (through December 31, 2019). Company may request price increases for consideration at least sixty (60) days prior to each anniversary of the Contract effective date. All requests must be submitted in writing to City of Charlotte Procurement Management along with documentation of bona fide materials and labor increases for the cost of Products. No adjustments shall be made to compensate a Company for inefficiency in operation or for additional profit. Price decreases shall be accepted at any time during the term of the contract.

**2.4 New Products and Services**

New Products and Services may be added to the Contract during the term of the Contract by written amendment, to the extent that those Products and Services are within the scope of this Contract and include, but will not be limited to, new Product added to the Manufacturer's listing offerings, and services which reflect new technology and improved functionality. All requests are subject to review and approval of the City of Charlotte.

**2.5 Training**

The Company shall provide all operational and safety training associated with any equipment included in the resulting Contract. This includes any OSHA required certifications or licenses associated with rental of provided equipment. The Proposal response shall include a complete description of training (methods of delivery, available locations, duration, content, etc.) along with pricing structure for each.

**2.6 Installation**

All Products provided under this Contract that require assembly and installation should be performed by the awarded Company's certified installers. All installation work must meet the manufacturer's specifications and industry standards.

**2.7 Safety**

Company and installers or subcontractors performing services for the City shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. The Company and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

**2.8 Delivery**

Company will be responsible for the delivery, setup and pickup of all equipment to the City or Participating Public Agencies in compliance with agreed upon Contract terms. Timely delivery is important to the City and Participating Public Agencies.

**2.9 Optional Work**

Company will be required to provide quotations on a case-by-case basis for optional related work as may be required to provide a full turnkey solution to Participating Public Agencies.

**2.10 Reports**

Company must maintain all records in compliance with federal and state regulations. A statistical report and an annual tabulated report must be submitted electronically to the City upon request.

**2.11 Prevailing Wages**

Company must comply with the prevailing wage requirements of each state. Please include any exceptions to this requirement in your proposal response, per Section 2.6.12 of this RFP.

### **Exhibit C Federal Contract Terms and Conditions**

This Exhibit is attached and incorporated into the Contract to Provide Equipment Rentals and Related Products and Services (the "Contract") between the City of Charlotte and Big Truck Rental ("Company"). Capitalized terms not defined in this Exhibit shall have the meanings assigned to such terms in the Contract. In the event of a conflict between this Exhibit and the terms of the main body of the Contract or any other exhibit or appendix, the terms of this Exhibit shall govern.

1. **Debarment and Suspension.** The Company represents and warrants that, as of the Effective Date of the Contract, neither the Company nor any subcontractor or subconsultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during the Contract term the Company or any subcontractor or subconsultant performing work at any tier is included on the federally debarred bidder's list, the Company shall notify the City immediately.
2. **Record Retention.** The Company certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The Company further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after it receives City notice that the City has submitted final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
3. **Procurement of Recovered Materials.** The Company represents and warrants that in its performance under the Contract, the Company shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
4. **Clean Air Act and Federal Water Pollution Control Act.** Company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)
5. **Energy Efficiency.** The Company certifies that the Company will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Company certifies that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Company, to any person for influencing or attempting to influence an officer or employee

- of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Company shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
  - c. The Company shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
7. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, the Company must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Company is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or purchases of transportation or transmission of intelligence.
8. **Right to Inventions.** If the federal award is a "funding agreement" under 37 CFR 401.2 and the City wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment of performance or experimental, developmental or research work thereunder, the City must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**REQUIRED FORM 8 – NON-DISCRIMINATION PROVISION**  
**RFP #269-2018-047 Equipment Rentals and Related Products and Services**

All requests for Bids or Proposals issued for City Contracts shall include a certification to be completed by the Bidder or Proposer in substantially the following form:

The undersigned Bidder or Proposer hereby certifies and agrees that the following information is correct:

1. In preparing it's the enclosed Bid or Proposal, the Bidder or Proposer has considered all Bids and Bids submitted from qualified, potential subcontractors and Company, and has not engaged in discrimination as defined in **Section 2**.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Bid or Proposal submitted with this certification, and terminate any Contract awarded based on such Bid or Proposal It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Proposer to any remedies allowed thereunder, including possible disqualification from participating in City Contracts or Bid processes for up to two years.
4. As a condition of Contracting with the City, the Bidder or Proposer agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of Company and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the Bid or Proposal and to any Contract awarded on such Bid or Proposal. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Bidder or Proposer to any remedies that are allowed thereunder.
5. As part of its Bid, or Proposal, the Bidder or Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or Proposer discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a Bid to the City, the Bidder or Proposer agrees to comply with the City's Commercial Non-Discrimination Policy as described in **Section 2**, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

NAME OF COMPANY: Big Truck Rental, LLC

BY: Zach Martin

TITLE: Vice President of Sales North America

SIGNATURE OF AUTHORIZED OFFICIAL: \_\_\_\_\_

DATE: 6-15-18

**REQUIRED FORM 9 – DEBARMENT CERTIFICATION**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

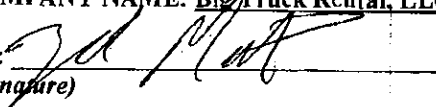
The bidder, or service provider, as appropriate, certifies to the best of its knowledge and belief that neither it nor any of its officers, directors, managers who will be working under this Contract or persons or entities holding a greater than 10% equity interest in it (collectively "Principals"):

1. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency in the United States;
2. Have within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract; violation of federal or state anti-trust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in paragraph 2 of this certification; and
4. Have within a three year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award or in some instances, criminal prosecution.. [Select one of the options below by checking associated box and completing associated blanks.]

**Option 1: I certify to all of the above statements.**

COMPANY NAME: Big Truck Rental, LLC

BY:   
(signature)

PRINT NAME: Zach Martin

TITLE: Vice President of Sales North America

DATE: 6-15-18

**Option 2: I cannot certify to one or more the above statements. Attached is my explanation.**

COMPANY NAME: \_\_\_\_\_

BY: \_\_\_\_\_  
(signature)

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Note: If unable to certify (Option 2 is selected), the bidder or service provider may still be awarded depending upon the explanation offered.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/12/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Commercial Lines - (813) 639-3000, USI Insurance Services National, Inc.
INSURED: Big Truck Rental, LLC
CONTACT NAME: Certificate Requests
PHONE (A/C, No, Ext): 813-639-7143
INSURER(S) AFFORDING COVERAGE: INSURER A: Zurich American Insurance Co NAIC #: 16535

COVERAGES CERTIFICATE NUMBER: 13411846 REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liability, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The certificate holder is included as an additional insured with respect to general liability when required in written contract and in accordance with the terms and conditions of the policy. The City of Charlotte's insurance will be primary for all Auto coverage with regard to vehicles leased or rented to the City.

CERTIFICATE HOLDER CANCELLATION

City of Charlotte Procurement Manager, 600 East 4th ST. CMGC 9th Floor, Charlotte, NC 28202
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE: [Signature]



The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph **D.1.** above (of this endorsement); or
- b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph **D.** shall not increase the applicable Limits of Insurance shown in the Declarations.

**E. Additional Insured – Vendors**

1. The following change applies if this Coverage Part provides insurance to you for "bodily injury" and "property damage" included in the "products-completed operations hazard":

Section II – **Who Is An Insured** is amended to include as an additional insured any person or organization (referred to throughout this Paragraph **E.** as vendor) who you have agreed in a written contract or written agreement, prior to loss, to name as an additional insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business:

However, the insurance afforded to such vendor:

- a. Only applies to the extent permitted by law; and
  - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such vendor.
2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:
    - a. The insurance afforded the vendor does not apply to:
      - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
      - (2) Any express warranty unauthorized by you;
      - (3) Any physical or chemical change in the product made intentionally by the vendor;
      - (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
      - (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
      - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
      - (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
      - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
        - (a) The exceptions contained in Subparagraphs (4) or (6); or
        - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
    - b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
    - c. This insurance does not apply to any of "your products" for which coverage is excluded under this Coverage Part.

3. With respect to the insurance afforded to the vendor under this endorsement, the following is added to Section III – **Limits Of Insurance**:

The most we will pay on behalf of the vendor is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph E.1. above (of this endorsement); or
- b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph E. shall not increase the applicable Limits of Insurance shown in the Declarations.

**F. Additional Insured – Managers, Lessors or Governmental Entity**

1. Section II – **Who Is An Insured** is amended to include as an insured any person or organization who is a manager, lessor or governmental entity who you are required to add as an additional insured on this policy under a written contract, written agreement or permit, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omission of those acting on your behalf; and resulting directly from:
  - a. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit;
  - b. Ownership, maintenance, occupancy or use of premises by you; or
  - c. Maintenance, operation or use by you of equipment leased to you by such person or organization.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. This provision does not apply:

- a. Unless the written contract or written agreement has been executed, or the permit has been issued, prior to the "bodily injury", "property damage" or offense that caused "personal and advertising injury";
- b. To any person or organization included as an insured under Paragraph 3. of Section II – Who Is An Insured;
- c. To any lessor of equipment if the "occurrence" or offense takes place after the equipment lease expires;
- d. To any:
  - (1) Owners or other interests from whom land has been leased by you; or
  - (2) Managers or lessors of premises, if:
    - (a) The "occurrence" or offense takes place after the expiration of the lease or you cease to be a tenant in that premises;
    - (b) The "bodily injury", "property damage" or "personal and advertising injury" arises out of the structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or
    - (c) The premises are excluded under this Coverage Part.

3. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph F.1. above (of this endorsement); or

- b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph F. shall not increase the applicable Limits of Insurance shown in the Declarations.

#### G. Damage to Premises Rented or Occupied by You

1. The last paragraph under Paragraph 2. **Exclusions** of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions c. through n. do not apply to damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in Section III – Limits Of Insurance.

2. Paragraph 6. of Section III – **Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or in the case of damage by one or more "specific perils" to any one premises, while rented to you or temporarily occupied by you with permission of the owner.

#### H. Broadened Contractual Liability

The "insured contract" definition under the **Definitions** Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage", or "personal and advertising injury" arising out of the offenses of false arrest, detention or imprisonment, to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

#### I. Definition – Specific Perils

The following definition is added to the **Definitions** Section:

"Specific perils" means:

- a. Fire;
- b. Lightning;
- c. Explosion;