Proposals - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No or Federal Social Security No.(Sole Proprietor)

Prompt Payment Discount: ___% for payment within ___days/net ___days

State Corporation Commission (SCC) Identification No.

By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Attachment B6, and by any other relevant certifications set forth in Attachment A, B, and C and the Affirmation of Legally Required Contract Terms set from in Attachment E.

Vendor Legally Authorized Signature __________________________ Date __________________________

Print Name __________________________ Title __________________________

Sealed proposals subject to terms and conditions of this Request for Proposal will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 until the date/time specified above.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION
SPECIAL PROVISIONS

1. **SCOPE OF SERVICES:**

   1.1. The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the provision of Tax-Exempt Master Lease financing to Fairfax County, Virginia (the County, Fairfax County or the Lessee). Terms not defined herein shall have the meanings set forth in Attachment A Form of Master Lease Agreement.

   1.2. The County requests sealed proposals from duly qualified and eligible vendors (the offerors) who are prepared to provide lease financing for the acquisition of certain equipment (the Equipment). The financing arrangement will take the form of a Master Lease Agreement (the Agreement or the Contract) between the successful offeror (the Lessor or Contractor) and the County providing for, among other things, (i) entering into a Master Lease Agreement for the lease purchase of Equipment by the County on behalf of its agencies and County entities including, but not limited to, the Fairfax County Park Authority and the Fairfax County Public Schools and (ii) payment of Lease Payments pursuant to the Appendices executed under the Agreement.

   1.3. The County is interested in receiving proposals from primary source lenders. It is the County’s intention to award the Master Lease Agreement to one direct lender. Brokers or other third-party funding sources should not respond to this RFP.

   1.4. The maximum amount to be disbursed by the Lessor for the purchase of Equipment by Lessee shall be a total of $30,000,000 for each year the Agreement is in effect.

2. **CONTRACT PERIOD AND RENEWAL:**

   2.1. The Contract will begin on March 2, 2020, or date of award, whichever is later, and terminate on March 1, 2021, unless extended.

   2.2. The Contract may be extended or renewed upon mutual written agreement between the County and the Lessor for four (4) twelve-month periods. Adjustments to the Discount and Spread used to calculate the Lease Rate or other agreed upon rate may be discussed only during the Contract renewal period, subject to mutual agreement. Documentation to support the requested rate adjustment must accompany the request. Any determination to extend or adjust the Contract shall be made in writing prior to the end of the initial Contract period, or any subsequent renewal periods.

   2.3. The obligation of the County to pay compensation due the Contractor under the Contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County’s obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the Contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the Contract beyond the amount appropriated for payment obligations under the Contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County’s failure to provide such notice shall not extend the Contract into a fiscal year in which sufficient funds have not been appropriated.

3. **BACKGROUND:**

   3.1. The Fairfax County Board of Supervisors established the County’s Master Equipment Lease-Purchase Program (“Lease-Purchase Program”) on June 6, 1994. Since inception, the Lease-Purchase Program has been used for Fairfax County and Fairfax County Public Schools Equipment needs.
SPECIAL PROVISIONS

3.2. Fiscal periods are defined as the date of July 1 through June 30.

3.3. The current contract can be viewed on the County’s contract register at https://www.fairfaxcounty.gov/cregister/ by entering the current contract number 4400005795 in the contract number field.

3.4. The County plans on delivering a tax opinion from the County’s Bond Counsel upon the closing of the Master Lease Agreement.

3.5. The Department of Procurement and Material Management or Fairfax County Public Schools Office of Procurement Services will contact the Lessor when the County initiates a draw (Appendix) on the Master Lease by means of a Financing Request Certificate (FRC). The Lessor has 30 days (unless otherwise agreed by the parties) to approve or reject the FRC.

Upon acceptance of a FRC, the Lessor will provide the interest rate and payment schedule to the County. The County will then complete the Appendix and transmit it to the Lessor. The Lessor is responsible for executing the Appendix and returning the schedules to the Department of Procurement and Material Management.

3.6. Solely for the purpose of providing historical information, the table below shows activity under the current contract for the period of March 2015 through September 2019. This table does not indicate the actual amounts that will be financed under the new Contract; the actual amounts will depend upon the County’s requirements during the term of the Acquisition Period. Award of this solicitation will not bind the County to finance any definite amount of equipment, other than financing requests submitted by the County and approved by the Contractor in accordance with the terms and conditions of the Agreement:

<table>
<thead>
<tr>
<th>Term</th>
<th>Number of Leases</th>
<th>Type of Projects Financed</th>
<th>Amount Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three Year</td>
<td>-</td>
<td>N/A</td>
<td>-</td>
</tr>
<tr>
<td>Four Year</td>
<td>6</td>
<td>Laptops</td>
<td>$35,907,682</td>
</tr>
<tr>
<td>Five Year</td>
<td>6</td>
<td>School Buses</td>
<td>$40,784,760</td>
</tr>
<tr>
<td>Seven Year</td>
<td>1</td>
<td>Public Safety Equipment</td>
<td>$7,831,984</td>
</tr>
<tr>
<td>Ten Year</td>
<td>-</td>
<td>N/A</td>
<td>-</td>
</tr>
</tbody>
</table>

3.7. The County expects to primarily finance laptops and school buses with the Master Lease. Currently, the County anticipates lease financing amounts to range from $15 million to $27 million on an annual basis. Please note that the amounts noted are preliminary estimates, subject to change.

4. GENERAL REQUIREMENTS:

4.1. The Master Lease Agreement contemplates the provision of lease financing by the Lessor to the Lessee for the acquisition of Equipment upon delivery by the Lessee of an Appendix. The rate of interest charged for each Equipment will be determined and calculated in accordance with the formula outlined in Attachment D.

4.2. Lease payments may be made on an annual basis or semi-annual basis. The County prefers to make lease payments on an annual basis. Accrued interest and regular interest shall be calculated as stated in Attachment D, using a schedule that corresponds to the term of financing mutually agreed to by both parties. Interest will be calculated on a 30/360-day basis. The County reserves the right to prepay any lease pursuant to Section 7.2 of the Master Lease Agreement (Attachment A).
SPECIAL PROVISIONS

4.3. Equipment to be purchased: The Equipment will consist of various types of new, surplus, or reconditioned personal property or such items as may be permitted by the Code of Virginia, all subject to Lessor’s approval. It is not known how the lease amounts will be distributed among the three, four, five, seven, or ten-year terms; and it is not known how the lease amounts will be distributed among various categories of Equipment.

Note – The County may obtain financing outside the Master Lease Agreement if it can obtain more favorable terms and conditions. The Agreement in no way conveys exclusive rights to the Lessor to provide Equipment financing.

5. TECHNICAL/COST PROPOSAL INSTRUCTIONS:

The offeror must submit the Technical and Cost Proposal in one binder containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein. Proposals shall be single spaced, use a font size not less than 12pt and be limited to a total of twenty (20) pages (not including Attachments A, B, C, D, E, or any submittals required by Attachments A, B, C, D, E, and any Addenda issued to the RFP).

5.1. Tab 1 - Introduction:

a. Cover Sheet (DPMM32)

b. Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.

5.2. Tab 2 - Statement of Qualifications:

a. Organizational Experience: A short description of expertise and experience of the firm relative to the scope of work contained in this RFP.

b. Provide a list of comparable equipment financings undertaken for localities in the Commonwealth of Virginia. As part of the list, please include the name of the entity, financing amount, financing date and a description of the financed Equipment. Please include the name and telephone number of the lessee point of contact for each financing. A minimum of three (3) similar financings and references shall be provided.

c. Provide current short-term and long-term credit ratings and credit outlooks.

d. Provide offeror’s total capital, equity capital, and net capital as of the most recently available date and state the "as of" date.

e. Disclose any professional disciplinary judgments or actions taken against the firm or the firm’s principals by professional regulatory bodies.

5.3. Tab 3 - Response to the Master Lease Agreement:

a. Statement and discussion of the requirements as they are analyzed by the offeror regarding the Scope of Services in, Special Provisions, paragraph 1 and the General Requirements in Special Provisions, paragraph 4.

b. If the offeror is proposing any covenants or representations that are different from or are in addition to the terms set forth in the form of the Master Lease Agreement (Attachment A) it must clearly state those covenants, representations, or terms in this section of its proposal. In addition, in this section the offeror may take exceptions to the other terms in the solicitation, however, some of the terms may not be negotiable (ref. Attachment E). Note: providing exceptions may result in a lower score.
SPECIAL PROVISIONS

c. The offeror may also comment on any aspect of the Request for Proposal, including suggestions on possible alternative approaches including but not limited to other financing options.

5.4. Tab 4 - Fairfax County Documents:

a. All the Attachment A documents
b. All the Attachment B documents
c. Attachment C
d. Attachment E
e. All issued Addenda

5.5. Tab 5 – Cost Proposal:

The County seeks to establish the financing cost for the Master Lease Agreement using the Intercontinental Exchange Swap Trade Index USD Rates 1100 (“ICE Index”). The ICE index or other agreed upon index for the three, four, five, seven, and ten-year terms as applicable shall be used to determine the interest rate for an Appendix with the corresponding term.

a. Each offeror must fill out the Proposal Table in Attachment D.

b. Describe prepayment provisions for any outstanding lease payments, including any prepayment penalties and any periods of time in which prepayment would not be permitted.

c. Describe any legal or other upfront expenses requested with the Master Lease Agreement. As part of your response, please describe whether you intend to use in-house or external legal counsel for this engagement, identify that individual(s) or firm, and describe any fees or out-of-pocket expenses to be paid by the County in connection with the Master Lease Agreement.

6. TRADE SECRETS/PROPRIETARY INFORMATION:

6.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials.

6.2. The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the offeror.

6.3. Request for Protection of Trade Secrets or Proprietary Information (Attachment C) is provided as a courtesy to assist offerors desiring to protect trade secrets or proprietary information from disclosure under the Virginia Freedom of Information Act.

6.4. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the proposal.

7. CONTACT FOR CONTRACTUAL MATTERS:

7.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

Yong Kim, CPPB, Contract Specialist II
Department of Procurement and Material Management
Telephone: (703) 324-3217
Email: dpmmteam1@fairfaxcounty.gov
SPECIAL PROVISIONS

7.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee about this procurement (see paragraph 12.3).

8. REQUIRED SUBMITTALS:

8.1. Each offeror responding to this RFP must supply all the documentation required in the RFP. Failure to provide the required documentation with the offeror's response to the RFP may result in the disqualification of the offeror's proposal.

8.2. Failure to sign “Attachment E” (Affirmation of Legally Required Contract Terms) may result in rejection of the offeror’s proposal.

9. SUBMISSION OF PROPOSAL:

9.1. One (1) original (duly marked) and three (3) copies of the Technical/Cost proposal shall be delivered to the following address listed on the cover sheet (DPMM32) in sealed envelopes or packages with the proposal number, title, and the offeror’s name and address on the outside. It is requested that the Technical/Cost Proposal also be provided on one flash drive. The offeror must include a notarized statement that the flash drive version is a true copy of the printed version. Electronically stamped delivery receipts are available.

9.2. It is the offeror's responsibility to clearly identify and to describe the services being offered in response to the RFP. Offerors are cautioned that the organization of their response, as well as level of thoroughness are critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive, and easy to follow manner.

9.3. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal are not desired. Elaborate artwork, expensive paper, bindings, visual and other presentation aids are not required. The County encourages the use of recycled paper, therefore it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.

9.4. Each original and set of the three (3) copies of the proposal shall consist of:

a. Technical and Cost proposal as required in the Special Provisions, paragraph 5, TECHNICAL/COST PROPOSAL INSTRUCTIONS (Attachment D must be included in the Cost proposal section).

9.5. By executing the cover sheet (DPMM32), offeror acknowledges that they have read this RFP, understand it, and agree to be bound by its terms and conditions. Proposals may be submitted by mail or delivered in person.

10. ADDENDA:

10.1. Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within ten (10) days before the due date. All addenda shall be signed and submitted as instructed in the addenda.

10.2. Notice of addenda will be posted on eVA and the DPMM current solicitation webpage. It is the Offeror’s responsibility to monitor the web page for the most current addenda at www.fairfaxcounty.gov/solicitations.

10.3. The last date to submit questions that maybe addressed in an addendum is November 22, 2019 at 4:30 P.M. eastern time.
11. **PROPOSAL ACCEPTANCE PERIOD:**

11.1. Any proposal submitted in response to this solicitation shall be valid for 180 days. At the end of the 180 days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

12. **BASIS FOR AWARD:**

12.1. This RFP is being utilized for competitive negotiation. Under the competitive negotiation process, a Contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the RFP.

12.2. A Selection Advisory Committee (the Committee) has been established to review and evaluate all proposals submitted in response to this RFP. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below in Special Provisions, paragraph 12.7.

12.3. No offeror, including any of their representatives, subcontractors, affiliates, and interested parties, shall contact any member of the Committee or any other person involved in the evaluation of the proposals. Committee members will refer any and all calls related to this procurement to the procurement official named in Special Provisions, paragraph 7.1. Failure to comply with this directive may, at the sole discretion of the County, result in the disqualification of an offeror from the procurement process.

12.4. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Committee for the purpose of obtaining verification or clarification of the written proposal(s). Upon completion of the oral presentation(s), if any, the Committee will re-evaluate each of the highest rated offeror(s) against the RFP evaluation criteria.

12.5. After the initial evaluation and any oral presentations selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP, including price. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the Committee will make appropriate recommendations to the County Purchasing Agent. The County shall select the offeror which, in its opinion, has made the best proposal, and shall award the Contract to that offeror following approval by the Board of Supervisors.

12.6. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that offeror.

12.7. **Proposal Evaluation Criteria**

The following factors will be considered in the award of the Contract:

- Detailed response to Statement of Qualifications, Special Provisions, paragraph 5.2. (20 points)
- Detailed response to Response to Master Lease Agreement, Special Provisions, paragraph 5.3 (40 points).
- Reasonableness of cost proposal provided in Attachment D and detailed response to Cost Proposal, Special Provisions, paragraph 5.6 (40 points).

12.8. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.
12.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.

12.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.

12.11. The County may cancel this RFP or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

13. **DATA SOURCES:**

13.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing or evaluating County data.

14. **INFORMATION SAFEGUARDS:**

14.1. Unless approved in writing by the County Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared or assembled by the Contractor under the final contract.

15. **ORDER OF PRECEDENCE:**

15.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders (Appendix A).

16. **SUBCONTRACTING:**

16.1. Contractor may not subcontract any part of its obligations under the Agreement.

17. **NEWS RELEASE BY VENDORS:**

17.1. As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

18. **AMERICANS WITH DISABILITIES ACT REQUIREMENTS:**

18.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of the Contract acknowledges your commitment and compliance with ADA.
18.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative at (703) 324-3201 or TTY 711. Please allow two (2) working days in advance of the event to make the necessary arrangements.

19. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

19.1. Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.
BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. AUTHORITY: The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent’s responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.

2. DEFINITIONS: Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

   AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

   BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

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

   CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

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

   PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

   REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

   SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

   CONDITIONS OF BIDDING

3. BID FORMS-Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

   If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. LATE BIDS & MODIFICATIONS OF BIDS-

   a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.

   b. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.
**General Conditions and Instructions to Bidders**

c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.

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

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

7. **LABELING OF BIDS** – All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder’s name and address clearly marked on the outside of the envelope or package.

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

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

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

11. **AREA BIDS**- For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.

12. **RECEIPT OF BIDS**- Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.

13. **BID OPENING**- All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 64, General Conditions and Instructions to Bidders. The Purchasing Agent’s representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County’s website at: [https://www.fairfaxcounty.gov/procurement/bid-tab](https://www.fairfaxcounty.gov/procurement/bid-tab)

Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 64, General Conditions and Instructions to Bidders.

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

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

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

16. **TAX EXEMPTION**- The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.

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

18. **UNBALANCED BIDS**— A Bid shall be mathematically unbalanced if the Bid contains unit pricing that does not reflect reasonable costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A Bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced Bid will result in the lower ultimate cost to the County. A Bid that is, in the sole discretion of the County Purchasing Agent, both mathematically and materially unbalanced, may be rejected as non-responsive.
19. **CLARIFICATION OF TERMS**—If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only be addendum issued by the contract specialist.

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

21. **SPECIFICATIONS**—When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter’s codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

**AWARD**

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

In determining the responsibility of a bidder, the following criteria will be considered:

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;

d. The quality of performance of previous contracts or services;

e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

g. The quality, availability and adaptability of the goods or services to the particular use required;

h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder’s County taxes or assessments are delinquent; and

j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

23. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS**—A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:

a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable

b. Acceptance Agreement

c. General Conditions and Instructions to Bidders

d. Special Provisions and Specifications

e. Pricing Schedule

f. Any Addenda/Amendments/Memoranda of Negotiations

24. **TIE-BIDS**—If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.
25. **PROMPT PAYMENT DISCOUNT**-
   
a. **Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.**

b. **If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.**

c. **For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.**

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

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

27. **DEFINITE BID QUANTITIES**- Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

28. **REQUIREMENT BID QUANTITIES**- On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

**CONTRACT PROVISIONS**

29. **TERMINATION OF CONTRACTS**- Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
   
a. **Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.**

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

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

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

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

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

33. **SUBLETTING OR ASSIGNMENT**- It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
34. **FUNDING**- The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County’s obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County’s failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

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

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

37. **NON-DISCRIMINATION**- During the performance of this contract, the Contractor agrees as follows:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
   b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
   d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.
   e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

38. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE**-  
   a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
   b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
   c. Where federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.

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

40. **PRICE REDUCTION**- If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. **FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.**
General Conditions and Instructions to Bidders

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

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

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

**DELIBERATION PROVISIONS**

43. **SHIPPING INSTRUCTIONS - CONSIGNMENT**—Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor’s name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

44. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED**—Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notice of rejection. Unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County’s own property.

45. **INSPECTIONS**—Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect, accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

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

47. **POINT OF DESTINATION**—All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

48. **ADDITIONAL CHARGES**—Unless bought F.O.B. "shipping point" and Contractor prepaids transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

49. **METHOD AND CONTAINERS**—Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

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

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

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

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County’s refusal to accept the goods.
General Conditions and Instructions to Bidders

BILLING

52. BILLING—Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

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

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

55. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING—When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

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

57. SERVICE CONTRACT GUARANTY—Contractor agrees to:
   a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
   b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
   c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
   d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
   e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infringement thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

58. INDEMNIFICATION—
   a. General Indemnification. Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor’s employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney’s fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor’s responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
b. Intellectual Property Indemnification. In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor’s products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney’s fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor’s reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 59, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

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

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

59. OFFICIALS NOT TO BENEFIT-

a. Each bidder, offeror, or contractor shall certify, upon signing a bid, proposal, or contract, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

60. LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled “Business, Professional and Occupational Licensing (BPOL) Tax.” Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, “Fairfax License Tax No.” when appropriate.

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

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

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

a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

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

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

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

BIDDER/CONTRACTOR REMEDIES

64. INELIGIBILITY-

a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.

1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.

2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.

b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:

   a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

   b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;

7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.

c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.
65. **APPEAL OF DENIAL OF WITHDRAWAL OF BID**

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

b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

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

66. **APPEAL OF DETERMINATION OF NONRESPONSIBILITY**

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

b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration.

In no event shall the performing Contractor be entitled to lost profits.

67. **PROTEST OF AWARD OR DECISION TO AWARD**

a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.D of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

68. **CONTRACTUAL DISPUTES**

a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent’s decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
General Conditions and Instructions to Bidders

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

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

70. **VENUE:** This contract and its terms, including but not limited to, the parties’ obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction’s choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

71. **COOPERATIVE PURCHASING**-The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

72. **DRUG FREE WORKPLACE**-During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

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

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

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

  a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;

  b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;

  c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and

  d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

  e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

**APPROVED:**

/S/ Elizabeth D. Teare  
COUNTY ATTORNEY

/S/ Cathy A. Muse  
COUNTY PURCHASING AGENT
FORM OF MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT, dated as of March __, 2020 is between ________________ as the Lessor hereunder (the "Lessor"), and Fairfax County, a political subdivision of the Commonwealth of Virginia ("Lessee" or "County").

RECITALS

The County on behalf of its various agencies and entities desires to enter into arrangements for the lease purchase of various Equipment.

Lessor desires to provide for the financing of such Equipment by entering into this Agreement.

NOW, THEREFORE, in consideration of the funds to be paid hereunder and the covenants and agreements contained herein, it is agreed by and between the parties as follows:

ARTICLE 1.

DEFINITIONS

For purposes of this Agreement and in addition to the terms defined elsewhere in this Agreement, the following terms have the meanings given below unless the context clearly requires otherwise:

1.1. **Acceptance Certificate**: means the certificate substantially in the form of Schedule 1 of the Appendix.

1.2. **Acceptance Date**: means the date on which an Appendix is sent via overnight delivery to the Lessor. The Lessee will not send an Appendix to the Lessor less than seven calendar days prior to the Vendor Payment Date, unless an alternative date is mutually agreed upon by the Lessor and the Lessee.

1.3. **Acquisition Period**: means the period commencing upon execution of this Agreement and ending on the end of the term of this Agreement, unless extended.

1.4. **Agreement**: means this Master Lease Agreement and its appendices as the same may be amended and supplemented from time to time in accordance with its terms.

1.5. **Appendix**: means collectively the Equipment Master Lease Agreement Cover Sheet, the Financing Request Certificate, the Acceptance Certificate, the Disbursement Authorization Certificate, Representation Certificate, Schedule of Equipment, and the Payment Schedule Certificate, all as substantially in the form attached hereto.

1.6. **Authorized Representative**: when used in respect to Lessee, means the Purchasing Agent of Fairfax County, Virginia, or such other person designated in writing by Lessee to act on Lessee's behalf.

1.7. **Award**: means the Acceptance Agreement that awards this Master Lease Agreement to Lessor.

1.8. **Base Rate**: means the Current Interest Rate Swap Index multiplied by the Discount.

1.9. **Business Day**: means a Fairfax County government business day, other than a Saturday, Sunday or day upon which banks in the Commonwealth of Virginia are authorized or required to be closed.
1.10. **Current Interest Rate Swap Index (“the Index”):** As used in this Master Lease Agreement shall mean the annualized interest rate as referenced in the [ICE Swap rate, USD Rates 1100 as reported by the ICE Benchmark Administration] on a daily basis for the calendar week preceding the Acceptance Date. The Index for the three, four, five, seven and ten-year terms shall be used to determine the interest rate for an Appendix (as defined in the Master Lease Agreement) with the corresponding term.

1.11. **Disbursement Authorization Certificate:** means the certificate substantially in the form of Schedule 2 of the Appendix.

1.12. **Discount:** means the percentage bid by the Lessor which is to be applied to the Current Interest Rate Swap Index to determine the Base Rate applicable to the calculation of the Lease Payments in an Appendix.

1.13. **Equipment:** means the items of new, surplus or reconditioned personal property or such other items as may be permitted by the *Code of Virginia* leased to Lessee pursuant to this Agreement and listed on an Appendix.

1.14. **Equipment Vendor:** means the individual, company, firm, corporation, partnership, or other organization with whom the Lessee enters into an agreement for the acquisition of Equipment with lease financing provided by this Agreement.

1.15. **Financing Request Certificate:** means the certificate substantially in the form attached hereto as Attachment A1.

1.16. **Lease Payments:** means the amounts designated in a Payment Schedule Certificate.

1.17. **Lease Rate:** means the simple interest rate derived by adding the Spread to the Base Rate applicable to the calculation of the Lease Payments in an Appendix.

1.18. **Payment Schedule Certificate:** means the certificate substantially in the form of Schedule 4 of an Appendix.

1.19. **Representation Certificate:** means the certificate substantially in the form of Schedule 3 of an Appendix.

1.20. **Transaction Documents:** means this Agreement and all attachments and schedules thereto and the Award.

1.21. **Vendor Payment Date:** means the date upon which disbursement is to be made to the Equipment Vendor or Lessor for the Equipment under the Agreement.

1.22. **Schedule of Equipment:** means the schedule substantially in the form of Schedule 5 of an Appendix.

1.23. **Spread:** means the number of basis points bid by the Lessor which is to be added to the Base Rate to determine the Lease Rate applicable to the calculation of the Lease Payments in an Appendix.
ARTICLE 2.

GENERAL PROVISIONS

2.1. Lessor reserves the right to reject for financing those items or types of Equipment which the Lessor determines to be non-essential, or any financing which, in Lessor's judgment, the length of the financing term exceeds the useful life of the Equipment, or such other reasonable and commercially acceptable basis as the Lessor may determine.

Nothing herein shall require Lessor to lease any Equipment until Lessor has agreed in writing. Lessor will review the Financing Request Certificate and provide an approval/disapproval within thirty (30) days, unless otherwise mutually agreed upon.

2.2. Upon approval by the Lessor of a Financing Request Certificate, Lessor agrees to lease Equipment to Lessee upon the provision by Lessee of an Appendix and Lessee agrees to lease Equipment from Lessor for the consideration indicated in such an Appendix.

2.3. No payments will be due under this Agreement either by Lessor or Lessee until the Lessor has been provided an Appendix signed by an Authorized Representative of the County. No payments will be due from Lessee to Lessor until Lessor has made payment to the Equipment Vendor.

2.4. The maximum amount to be disbursed by the Lessor for the purchase of Equipment by Lessee shall be a total of $30,000,000 for each year this Agreement is in effect.

ARTICLE 3.

ACQUISITION PERIOD

3.1. Notwithstanding the expiration of the Acquisition Period, and any extension thereof under Section 3.4, the provisions of this Agreement shall continue to apply to all outstanding obligations under this Agreement until they are extinguished.

3.2. Appendices may be executed during the Acquisition Period, and any extension thereof under Section 3.4.

3.3. The term of each Appendix entered into pursuant to this Agreement shall be for a period of three (3), four (4), five (5), seven (7), or ten (10) years based upon the number of years from the Vendor Payment Date.

3.4. The Acquisition Period under this Agreement may be extended for four additional twelve (12) month periods upon mutual written agreement between the Lessor and Lessee prior to the end of the original Acquisition Period, and subsequent renewal periods.

ARTICLE 4.

PAYMENT

4.1. Amount and Times of Payment by Lessee: The lease purchase amount and interest thereon based upon the Lease Rate, as indicated in Schedule 4 of each Appendix shall be paid by the County in [annual installment payments or, upon agreement between the Lessor and the Lessee, on a monthly, quarterly, semi-annual basis, which shall be indicated in such Appendix. Payments for partial months and accrued interest shall be calculated on a 30/360 basis.
FORM OF MASTER LEASE AGREEMENT

[The Lease Rate will be established before the Acceptance Date through execution of an Appendix.] Except as provided in Section 4.4, the Lessee shall be required to make Lease Payments and any other payments required hereunder. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Lease Payments and other payments required hereunder when due and shall not assert any right of set-off or counterclaim against its obligation to make such Lease Payments or other payment required under this Agreement.

The County shall pay the Lease Payments exclusively from moneys legally available therefor in lawful money of the United States of America. A portion of each Lease Payment is paid as and represents the payment of interest as set forth in the Payment Schedule Certificate relating to the Appendix.

Except as provided in Section 4.4 herein, the obligation of the County to make Lease Payments required hereunder shall be absolute and unconditional in all events. Lessee's obligation to make Lease Payments shall not be abated as a result of accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment.

4.2. **Amount and Times of Payment By Lessor:** Payment by Lessor must be made to Lessee's Equipment Vendor or, where the Lessee previously arranged to make payment directly to the Equipment Vendor, to the Lessee on or before the Vendor Payment Date given in an Appendix. The amount of payment will be stated in an Appendix. Late payment by Lessor due to negligence or fault of the Lessor may cause liquidated damages to be paid by Lessor to Lessee pursuant to Section 4.8 below; provided such Vendor Payment Date shall not be less than seven (7) calendar days after nor more than fourteen (14) calendar days after the Acceptance Date.

The date of postmark where payment is made by mail, the date of the express mail package where payment is made by express mail, or the date of the wire transfer where payment is made by wire shall be deemed to be the date of payment by the Lessor to the Equipment Vendor or Lessee.

Lessee shall provide all appropriate documentation evidencing an official intent to reimburse for any Appendix where proceeds will be used to reimburse the County for a prior expenditure. Such documentation shall satisfy all requirements specified in Section 1.150-2 of the Treasury Regulations.

As evidence of payment by Lessor to Lessee's Equipment Vendor, Lessor shall return to Lessee immediately upon payment a signed copy of the Disbursement Authorization Certificate.

4.3. **Maximum Payment:** Except as provided in Sections 5.3, and 7.2, the total charges paid by Lessee shall not exceed the amount of funds calculated on an Appendix.

4.4. **Subject to Appropriation:** The obligation of the Lessee to make Lease Payments and any other payment obligations due under this Agreement (including without limitation, Lessee's obligations as set forth in Sections 5.3, 5.5 and 5.6) after June 30th of the current fiscal year is subject to the availability of appropriations for this purpose by the Board of Supervisors of Fairfax County. Lessee's obligations to make payments during subsequent fiscal years are dependent upon the same action.

In the event of non-appropriation of funds by the Board of Supervisors of Fairfax County for Lease Payments or other payments for any or all of the Equipment under an Appendix, that Appendix will terminate on June 30th of the then current fiscal year. Written notice will be provided within thirty (30) days to the Lessor after action is completed by the Board of Supervisors.

In the event of a termination of an Appendix for non-appropriation, Lessor shall have the right to repossess the Equipment covered by that Appendix.
FORM OF MASTER LEASE AGREEMENT

The obligations of the County, including its obligation to pay the Lease Payments due in any Fiscal year of the term of an Appendix, shall not constitute an indebtedness of the County within the meaning of the Constitution and laws of the Commonwealth of Virginia.

Nothing herein shall constitute a pledge by the County of any taxes or other moneys (other than moneys lawfully appropriated from time to time for each Appendix) to the payment of any Lease Payment or other amount coming due hereunder.

4.5. **Events of Default by Lessee:** Any of the following events that may occur shall constitute an Event of Default by the Lessee under this Agreement:

a) The nonpayment by the County of any Lease Payment required hereunder, or the default by the Lessee in the performance of any of the obligations, covenants, terms and provisions contained or referred to in this Agreement, which nonpayment or default is not cured within thirty (30) days of the receipt of written notice (certified mail, return receipt requested) thereof from Lessor to Lessee; provided, however, the termination as described in Article 7 or termination due to non appropriation of funds as described in Section 4.4, shall not constitute a default or an Event of Default hereunder and shall not give rise to any of the remedies hereinafter authorized.

b) Any warranty, representation, or statement of Lessee contained in this Agreement proves to have been false in any material respect when made or furnished.

c) Loss, theft, substantial damage, destruction, sale, or encumbrance of or to any of the Equipment, or the making of any levy, seizure or attachment thereof or thereon provided that the Lessee is not taking steps to replace, repair, or remove any encumbrances from such Equipment.  (See Section 5.6.)

4.6. **Events of Default by Lessor:** Any of the following events that may occur shall constitute an Event of Default by Lessor under this Agreement:

a) **Late payment by Lessor to Lessee’s Equipment Vendor, or to Lessee, unless caused directly or indirectly, by the County.**

b) Any warranty, representation, or statement of Lessor contained in this Agreement proves to have been false in any material respect when made or furnished.

4.7. **Remedies of Lessor:** Upon the occurrence of an Event of Default by Lessee, then Lessor may at its option, take any one or more of the following actions:

a) Declare the entire amount of unpaid Lease Payments under the appropriate Appendix for the current fiscal year due under this Agreement to be immediately due and payable, without further notice.

b) Repossess the related Equipment.

c) Retain prior payments and sell or lease the related Equipment through public or private transaction after giving Lessee reasonable notice with or without having the Equipment at any such sale or leasing.  Lessor may purchase all or part of the Equipment under the appropriate Appendix as a result of such transactions. The proceeds of any sale or leasing will be applied to the payment of the unpaid balance of Lessee’s obligations under this Agreement.

Lessee shall remain liable for any deficiency of unpaid payment for which funds have been appropriated for the current fiscal year. Any amounts in excess of Lessee’s obligation under this agreement, received from the proceeds of any sale or leasing, shall be paid to Lessee.
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d) Institute all remedies available to Lessor as allowed by law and in equity.

e) Terminate this Agreement.

Lessor's attempt to exercise any of the remedies herein entitles Lessee to prepay, without notice, as provided in Section 7.2 herein, notwithstanding any provisions to the contrary contained therein.

4.8. Remedies of Lessee: Upon the occurrence of an Event of Default by Lessor, the Lessee may, at its option, take any one or more of the following actions:

a) Should Lessor not make the entire payment to Lessee's Equipment Vendor on or before the Vendor Payment Date as described in Section 4.2, Lessee may require payment of liquidated damages at the rate of one percent (1%) per day of the amount of the equipment purchase as designated in the related Disbursement Authorization Certificate. The amount of the damages will be paid by Lessor to Lessee.

b) Institute all remedies available to Lessee as allowed by law and in equity.

c) Terminate this Agreement.

4.9. Notwithstanding the foregoing, an Event of Default under a single Appendix shall not constitute an Event of Default under any other Appendix and shall not give rise to institution of remedies under any other Appendix.

ARTICLE 5.
RESPONSIBILITIES OF LESSEE

5.1. Care and Use of Equipment: Lessee, at its own expense, shall obtain remedial and preventive maintenance to keep the Equipment in good operating condition.

5.2. Inspection: Subject to security regulations, Lessee will allow Lessor to enter the premises where the Equipment is located during normal business hours for the purposes of inspecting the Equipment and observing whether Lessee is in compliance with its responsibilities.

5.3. Taxes and Licenses: The Lessee, as a political subdivision of the Commonwealth of Virginia, is exempt from taxation and therefore Federal excise taxes and from all State sales and use taxes. In the event that the Equipment or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Lessee shall, during the term of this Agreement pay the amount of all such taxes, assessments and governmental charges then due, subject to the availability of appropriations therefor. The Lessee may, at the expense and in the name of the Lessee, in good faith contest any such taxes, assessments and other charges in any reasonable manner which does not, in the opinion of independent counsel, adversely affect the right, title and interest of Lessor in and to any item of the Equipment or its rights or interest under this Lease or subject any portion of any item of Equipment to loss or forfeiture, and in the event of any such contest, may permit the taxes, assessment or other charges so contested to remain unpaid during the period of such contest or any appeal therefrom.

5.4. Delivery of Related Documents:

a) For each item of Equipment, Lessee shall provide:

i) A Financing Request Certificate for Lessor's review and approval.
FORM OF MASTER LEASE AGREEMENT

ii) An Appendix substantially in the form attached hereto.

iii) Financing statements or other documents to evidence Lessor's security interest provided that such statements shall not impose liabilities and/or responsibilities inconsistent with this Agreement.

iv) A copy of the IRS Form 8038-G or 8038-GC; original to Internal Revenue Service.

b) For each item of Equipment, Lessee shall provide upon written request of the Lessor:

i) Lessee's maintenance contract on the Equipment, if applicable.

ii) Such other documents at the time of execution as the parties reasonably believe necessary to protect their interests in this Agreement and in the Equipment, provided that no such document may impose liabilities and/or responsibilities on the Lessor or Lessee inconsistent with this Agreement and no such document is deemed to be incorporated into, or to amend or to alter the terms of this Agreement.

c) Upon the closing date of the Agreement and thereafter as changes occur, Lessee will provide a listing of Authorized Representatives to Lessor.

d) Upon the closing date of the Agreement and on the renewal date of each year thereafter, Lessee will provide a certificate of insurance or self-insurance to Lessor.

e) Upon the closing date of the Agreement, opinions of counsel as to such matters as mutually agreed to by the parties will be provided. Upon the closing date of the Agreement, the County will provide an opinion from a nationally recognized bond counsel to the effect that the interest will be excluded from gross income for federal income tax purposes.

Neither the County nor any officer of the County shall be required to furnish any documents or other assurances for the purposes of enabling or aiding in the public sale or offering for limited sale of securities by the Lessor, its assignees or others, including, but not limited to, certificates pertaining to arbitrage or the exemption of interest on such securities from federal, state or local taxation.

5.5. Liability and Property Insurance: During the term of this Agreement, the Lessee agrees to pay for and provide or to cause to be paid for or provided the following insurance coverage or self-insurance programs with respect thereto:

a) Self-insurance or insurance coverage against the risk of any direct physical loss of or damage to the Equipment. Such insurance shall be in the standard form for such coverage carried by the County.

The deductible amount shall be the standard deductible amount at the time in use by the County. The proceeds of such insurance coverage shall be applied to the repair or replacement of the Equipment or the purchase thereof as provided in Section 7.2.

b) Self-insurance or commercial general liability insurance against liability for death or bodily injury and for damage to and loss of the use of Equipment, arising out of the ownership, maintenance or use of the Equipment, which insurance coverage shall not be circumscribed by any endorsements limiting the breadth of coverage (limited only as may be provided in the standard form for such coverage). The proceeds of such insurance coverage shall be applied to satisfaction of the liability.
5.6. **Damage to or Destruction of Equipment:** If after delivery of any Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event either: (a) replace the same at Lessee's sole cost and expense with Equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement Equipment to be subject to Lessor's reasonable approval, whereupon such replacement Equipment shall be substituted in this Agreement and other related documents by appropriate endorsement or amendment; or (b) pay the applicable prepayment price as set forth in Section 7.2 hereof to which such Equipment belongs.

Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. The net proceeds of all insurance payable with respect to the Equipment shall be available to Lessee to discharge Lessee's obligation under this Section. Upon payment of the prepayment price as set forth in Section 7.2 hereof with respect to any Appendix, this Agreement shall terminate with respect to the related Equipment and Lessee thereupon shall become entitled to such Equipment on an AS IS, WHERE IS basis and Lessor makes no warranties or representations of any type as to the Equipment, except that such Equipment shall not be subject to any lien or encumbrance created by or arising through Lessor.

5.7. **Risk of Loss:** Unless Section 6.9 of this Agreement is applicable; all risk of loss to the Equipment arising out of the ownership, possession or use of the Equipment shall be borne by Lessee, unless such loss is caused by the error, omission or negligent acts of the Lessor, its employees and/or agents.

5.8. **Budgeting:** The County Executive of Fairfax County will annually advise the Board of Supervisors of Fairfax County of the existence of this Agreement and include the amount of funds necessary to make Lease Payments for the coming fiscal year in the County Executive's Advertised Budget Plan in order that the Board of Supervisors can determine whether to appropriate sufficient funds to make such Lease Payments for the then-coming fiscal year.

**ARTICLE 6.**

**EQUIPMENT**

6.1. **Title:** Title to Equipment on an Appendix shall pass to the Lessee upon acceptance thereof and shall remain with Lessee upon payment in full. Title to Equipment on an Appendix will revert to Lessor upon termination of an Appendix or the occurrence of an Event of Default pursuant to Section 4.5.a though 4.5.c.

6.2. **Security Interest:** The Lessee grants to Lessor and Lessor retains a purchase money security interest in the Equipment. Lessee will not change or remove any insignia or lettering, which Lessor may place on the Equipment to indicate its interest therein until all Lease Payments are made. Until all Lease Payments are made or prepayment is complete, Lessee shall keep the Equipment free from any lien, encumbrance or legal process, which would conflict with this security interest.

6.3. **Filing:** Subject to the provisions of Section 5.4.a.iii, Lessee authorizes Lessor to make Lessor's security interest a matter of public record by filings of any appropriate standard documents necessary for that purpose. Lessee agrees to sign or execute such documents and cooperate to effect perfection of Lessor's security interest in any titled vehicles covered by any Appendix. Lessee will provide sixty (60) days' written notice to Lessor that Equipment is being relocated to ensure that Lessor may perfect additional filings as necessary. Lessee makes no representation, warranty or covenant as to the adequacy or sufficiency of any such documents to create, attach, or perfect any security interest in such Equipment.
FORM OF MASTER LEASE AGREEMENT

6.4. **Personal Property:** The Equipment shall remain personal property of the Lessee and shall not be deemed to have become real property regardless of the manner in which it is affixed to real property.

6.5. **Alterations, Additions, Attachments:** Lessor hereby agrees to allow the Lessee to add and attach to the Equipment such additional equipment, facilities or fixtures as the Lessee may subsequently acquire (exclusive of repair, service replacement parts, which do not constitute new Equipment, etc.) notwithstanding the form of financing that the Lessee might use, which additional equipment, facilities or fixtures shall not be a part of or subject to this Agreement, unless by express written amendment.

6.6. **Removal of Alterations, Additions, and Attachments:** In the event title to the Equipment reverts to Lessor, Lessee, at its own expense will remove all alterations, additions and attachments and repair the Equipment as necessary so as to return the Equipment to the condition in which it was furnished, reasonable wear and tear excepted.

6.7. **Return of Equipment:** Upon rightful demand of the Lessor, as specified herein, for the Equipment listed in any attached Appendix, Lessee shall deliver possession of the Equipment to Lessor in the condition in which the Equipment is required to be maintained according to this Agreement. In such event, Lessee will, at its own expense, deliver the Equipment to Lessor at a location designated by Lessor. Such location, however, shall not be more than 100 miles from the Lessee's business location. Lessee will not be responsible for any shipping charges beyond the 100-mile limit.

6.8. **Quiet Enjoyment:** The Lessee shall be entitled to possess and use the Equipment during the term of this Agreement without interruption by the Lessor, provided that the Lessee has duly performed its obligation under this Agreement. Any Equipment acquired under terms of this Agreement may be operated at any time at the convenience of the Lessee.

6.9. **Liability of Lessor:** Notwithstanding Section 11.2 of this Agreement, in the event that the Lessor is required to perform work at the Lessee's location and such work is performed by Lessor or its agents, the Lessor shall (1) maintain such bodily injury and property damage liability insurance as necessary to protect itself from claims arising out of performance of this Agreement, and (2) indemnify and hold harmless the County, Fairfax County Public Schools, and the Fairfax County Park Authority, as well as their respective agencies, employees, and designated representatives, from any and all claims, suits, actions, liabilities, and costs of any kind (including attorney's fees) arising from acts or omissions of the Lessor, its agents, officers, employees, subcontractors or assigns.

ARTICLE 7.

TERMINATION OF AN APPENDIX

7.1. **Termination:** Lessor and the Lessee agree that the Agreement shall remain in force for the periods set forth in each Appendix, provided, however, the Lessee may terminate any such Appendix at the end of any fiscal year (June 30) in the event that funds for the purpose of making Lease Payments for the next fiscal year have not been appropriated or the Lessee is not otherwise able to meet its obligations hereunder. Termination of an Appendix shall not terminate this Agreement and shall not terminate any other Appendix.

7.2. **Prepayment:** Lessee shall have the right, exercisable only on 30 days’ written notice to the Lessor, to prepay Lease Payments at ____% of the principal amount outstanding. No prepayments will be made within ____ of each funding draw.

Lessee's right hereunder shall be exercised by:

a) Lessee advising Lessor, in writing, of its intention to prepay its obligations hereunder and the effective date of that payment ("Prepayment Date"), such date being a regularly scheduled payment date, and
b) By Lessee paying Lessor the outstanding principal balance as of the Prepayment Date together with interest from the most recent Lease Payment date to and including the Prepayment Date.

c) Upon prepayment, the Lessee will pay any sums in arrears.

7.3. **Lessee's Rights on Prepayment or Payment in Full:** Upon (1) Lessee's exercise of its right of prepayment in accordance with the preceding subsection or (2) Lessee's having satisfied all of its monetary and other obligations hereunder, Lessor shall deliver to Lessee, all documents necessary to transfer or confirm, as the case may be, legal and beneficial title, and possession free of all liens and encumbrances to Lessee and to evidence the termination of Lessor's interest therein. The Equipment will be accepted by Lessee at that time on an AS IS, WHERE IS basis and Lessor makes no warranties or representations of any type as to the Equipment.

**ARTICLE 8.**

**ASSIGNMENT BY LESSOR**

8.1. **Right of Assignment:** This Agreement shall be binding upon and inure to benefit of the Lessor and Lessee. This Agreement, Lessor's rights hereunder, and the obligations hereby described are not assignable, except as provided in Section 8.2 or transferable except by written mutual agreement of the parties hereto.

8.2. **Assignment By Lessor:** Neither the Lessor nor its assignees may, by assignment of this Agreement or otherwise, publicly sell or offer for limited sale securities based on the Lessee's obligations under this Agreement without prior written approval of the Lessee. Lessor may designate a paying agent or trust for the receipt of all payments under all Appendices under this Agreement, subject to prior written approval of the Lessee. The Lessee may require such written assurances, indemnification, legal opinions, and other measures as it may deem necessary to protect the interests of the Lessee.

The Lessor may assign the payment obligations of the Lessee pursuant to an Appendix to an affiliated or another institutional investor provided that the payments would continue to be made to the Lessor.

Lessor shall, as agent for Lessee, keep a record of all such assignments in compliance with section 149(a) of the Internal Revenue Code of 1986, as amended.

**ARTICLE 9.**

**WARRANTIES AND REPRESENTATIONS**

9.1. **Warranties and Representations of Lessee:** The Lessee represents and warrants to the Lessor and, so long as this Agreement is in effect or any part of Lessee's obligations to the Lessor remain unfulfilled, shall continue to warrant at all times, that:

a) Lessee is duly organized and validly existing and has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.
FORM OF MASTER LEASE AGREEMENT

b) This Agreement and all other Transaction Documents and the performance of Lessee’s obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to Lessee, the consent of all necessary persons or bodies has been obtained and all of the Transaction Documents executed by Lessee have been duly and validly executed and delivered by Authorized Representatives and constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms.

c) The Lessee reasonably expects to own, operate and use the Equipment in connection with the exercise of its governmental functions during the term of the Agreement.

9.2. **Warranties and Representations of Lessor:** Lessor represents and warrants to Lessee and, so long as this Agreement is in effect or any part of Lessor's obligations to Lessee remain unfulfilled, shall continue to warrant at all times that:

a) Lessor has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.

b) The Transaction Documents executed by Lessor have been duly authorized, approved, executed and delivered by its authorized representatives and constitute legal, valid and binding obligations of Lessor enforceable against Lessor in accordance with their respective terms.

**ARTICLE 10.**

**GENERAL**

10.1. **Waiver:** No delay or omission by Lessor in exercising any right in any of the Transaction Documents shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude Lessor from any or further exercise of any right or remedy.

10.2. **Heading:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provisions of this Agreement.

10.3. **Severability:** In the event any portion of this Agreement shall be finally determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be stricken and this Agreement as modified, shall continue in full force and effect.

10.4. **Governing Laws:** This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction).

10.5. **Implementation:** This Agreement shall be implemented by its execution and the execution from time to time of appendices hereto. For purposes of construing a transaction as an integrated contract and for the purposes of the provisions of Article 8, the following shall be considered a single transaction or legal binding agreement:

a) This Agreement, which provides basic terms and conditions.

b) An executed Appendix, which provides for the description of the Equipment to be purchased, the payments from Lessee to Lessor for the purchase of such Equipment and the prepayment amounts.

10.6. **Amendment:** Neither this Agreement nor any of the Transaction Documents may be amended unless the same be in writing, signed by the parties hereto.
FORM OF MASTER LEASE AGREEMENT

10.7. **Contractual Records:** All contractual books, records and other documents related to matters under this Agreement shall be made available by Lessor to Lessee and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

10.8. **No Waiver:** Nothing contained in this Agreement shall be deemed or be construed to be an express or implied waiver of the sovereign immunity of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth.

10.9. **Disputes:** Any dispute, claim or cause of action filed by or on behalf of the Lessor shall be governed by paragraphs 68 and 69 of the General Conditions and Instructions to Bidders (which is incorporated herein by reference).

10.10. **Entire Agreement:** This Agreement and the Award, which is hereby incorporated herein by reference and attached hereto, and the Appendices as may be hereafter executed, constitute the entire agreement between the parties hereto. All prior negotiations, representations and additional or inconsistent oral or written statements are superseded, null and void. In the event of a conflict between this Agreement he Award, the terms of this Agreement shall control.

10.11. **Counterparts:** This Agreement may be executed in several counterparts each of which shall be an original and all of which together shall constitute but one and the same instrument.

ARTICLE 11.

DISCLAIMER OF WARRANTIES

11.1. LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT; AND LESSOR HAS EXPRESSLY MADE NO WARRANTY AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT.

11.2. Lessor shall not be liable to the Lessee for any liability, loss or damage caused or alleged to be caused, directly or indirectly, by the Equipment or by any inadequacies thereof or deficiency or defect therein, by any incident whatsoever in connection therewith or in any way related to or arising out of this Agreement. The Lessee shall be entitled to the benefit of any applicable manufacturer's warranties and rights, including rights and warranties that it may have under the agreement with the Equipment Vendor.

11.3. Lessor agrees to execute and deliver such further instrument as may be necessary, in the reasonable opinion of the Lessee, to enforce any of Lessee’s rights against the Equipment Vendor and to enable Lessee to enforce any warranties and obtain the warranties and service furnished for the Equipment by the manufacturer.
ARTICLE 12.

SIGNATURES

12.1. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LESSOR

(Signature)

Name

Title

(Date)

FAIRFAX COUNTY

(Signature)

Cathy A. Muse, CPPO

Name

County Purchasing Agent

Title

(Date)
FAIRFAX COUNTY, VIRGINIA
Master Equipment Leasing Program

FINANCING REQUEST CERTIFICATE

FROM: ____________________________________________
  (Agency Director)

TO:    Joseph LaHait, County Debt Manager
        Department of Management and Budget

AGENCY CONTACT: __________________________________

CONTACT PHONE: __________________ FAX #: __________________

AMOUNT:  
  Equipment Cost
  Down Payment ( ________________ )
  Trade - In ( ________________ )

Amount Financed: __________________

FINANCING TERM: __________________

EXPECTED FUNDING DATE: ________________

EQUIPMENT:
  • Complete Equipment Description (non- technical description)
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________

  • Proposed equipment is replacement - age of equipment being replaced?
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________

  • Proposed equipment is additional - why is equipment needed?
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________

  • What function does equipment perform (essential use)?
  ____________________________________________________________
  ____________________________________________________________
  ____________________________________________________________

Please attach a copy of project justification, cost/benefit analysis or feasibility study if one was prepared.
First year payment appropriated? Yes___ No Explain: ________________________________

APPROVED:  LESSOR: ________________________ Signature ______________ Date ________________
BY: ____________________________
TITLE: ____________________________
Lessee hereby leases the Equipment described in the Schedule of Equipment, pursuant to the attached Schedules and the terms and conditions of the Master Lease Agreement dated March ___, 2020 between the undersigned Lessor and Lessee.

Attachments: Acceptance Certificate (Schedule 1)  
Disbursement Authorization Certificate (Schedule 2)  
Representation Certificate (Schedule 3)  
Payment Schedule Certificate (Schedule 4)  
Schedule of Equipment (Schedule 5)  

FAIRFAX COUNTY, VIRGINIA  
LESSEE ________________________________  LESSOR ________________________________

BY:____________________________________  BY:____________________________________

TITLE: County Purchasing Agent or Authorized Agents  TITLE: ______________________________

DATE: ________________________________  DATE: ________________________________
APPENDIX NO. __

ACCEPTANCE CERTIFICATE

(Schedule 1)

Contract No. __________

Fairfax County, Virginia, acting by and through ___________ hereby accepts for purposes of the Master Lease Agreement dated _______, 2020 (the "Agreement") by and between _______________ and Fairfax County, Virginia, the Equipment described below, evidencing acceptance pursuant to the Agreement and for purposes of this Agreement only. Pursuant to the Agreement, the undersigned County representative hereby certifies that (i) the Equipment described below has been delivered to the County; and (ii) except as provided in paragraph 4.4 of the Agreement, the obligation of the County to make Lease Payments required hereunder shall be absolute and unconditional in all events. Lessee’s obligation to make Lease Payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment. Nothing herein shall affect any of the County’s rights, remedies or warranties against the Equipment Vendor.

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Manufacturer/ Seller</th>
<th>Description</th>
<th>Identification or Serial No.</th>
<th>Cost</th>
</tr>
</thead>
</table>

FAIRFAX COUNTY, VIRGINIA

__________________________

(County Agency)

By: _______________________

(Signature)

__________________________

(Name - Type or Print)

Title

Dated: _____________________

________________________________________

By: _________________________

(Signature)

__________________________

(Name – Type or Print)

County Purchasing Agent or Authorized Agents

Title

Dated: _____________________
APPENDIX NO. ___

DISBURSEMENT AUTHORIZATION CERTIFICATE

(Schedule 2)

Contract No. __________

In accordance with the terms of the Master Lease Agreement dated as of __________, 2020 by and between __________ and Fairfax County, Virginia, Fairfax County hereby submits this Disbursement Authorization Certificate to request a disbursement under the Agreement for certain Equipment shown on Schedule 1 of this Appendix. The County represents and warrants for all purposes of this Certificate, that:

1. The amount of the disbursement pursuant to this Certificate is $_______ (the “Equipment Purchase Amount”). Such disbursement is to be made on or before ________________ (the “Vendor Payment Date”).

2. Payment of the disbursement requested hereby is to be made to _____________ (the “Equipment Vendor” or the Lessee in the case of a reimbursement) at the following address:

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
_________________________________________(tel. no.)

3. Attached hereto are vendor invoices.

FAIRFAX COUNTY, VIRGINIA

By: ____________________________________________
(Signature)

________________________________________________
(Name - Type or Print)

County Purchasing Agent or Authorized Agents
(Title)

Dated: ______________________________________
APPENDIX NO. ___

REPRESENTATION CERTIFICATE

(Schedule 3)

Contract No. __________

**Fairfax County Government Contact for this Agreement:**

Name: Yong Kim, CPPB

Address: 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035

Phone: 703-324-3884; Fax 703-324-3228

Email: yong.kim@fairfaxcounty.gov

or

Email: dpmteam1@fairfaxcounty.gov

**Lessor Contact for this Agreement:**

Name: __________________________

Address: ______________________________________________________

Phone: (___) ___-___

**County Billing Address for Lease Payment Invoices:**

Specific billing reference or Instructions, if any (i.e., P.O.#, Contract #, wiring instructions, etc.)
APPENDIX NO. __

PAYMENT SCHEDULE CERTIFICATE - PERIODIC PAYMENTS

(Schedule 4)

Contract No. Contract No. ____________

Pursuant to the terms of the Agreement, the County requests that the lease purchase of the Equipment with respect to this Appendix in the amount of $ ______ be financed over a _____ year period. Based on the Acceptance Date, the Current Interest Rate Swap Index for this financing is __________. Based on the Current Interest Rate Swap Index, the interest rate for this financing is ___ %.

The initial payment for this financing is $______, thereafter, the periodic payment will be $_________. The schedule of Lease Payments or the Equipment with respect to this Appendix is as follows:

[See attached Debt Service Schedule]

FAIRFAX COUNTY, VIRGINIA

By: _________________________________

(Signature)

_______________________________

(Name - Type or Print)

County Purchasing Agent or Authorized Agents

(Title)

Dated: _______________________________
APPENDIX NO.__

EQUIPMENT MASTER LEASE AGREEMENT
SCHEDULE OF EQUIPMENT

SCHEDULE NO. 5

Contract No. __________

In accordance with the terms of the Master Lease Agreement dated __________, by and between _______________ and Fairfax County, Virginia, the Equipment described below shall be leased pursuant to this Appendix.

<table>
<thead>
<tr>
<th>Item of Equipment*</th>
<th>Qty</th>
<th>Cost per Unit</th>
<th>Using Entity</th>
<th>Delivery Date</th>
</tr>
</thead>
</table>

(*Include a detailed description of the specifications of the items of equipment and, for each serial numbered item, the serial number, and where no serial number is included, sufficient information to determine to which items of equipment Lessor's security interest attaches.)

LESSOR

By: ____________________________
    (Signature)

    ____________________________
    (Name – Type or Print)

    ____________________________
    (Title)

Date: ____________________________

FAIRFAX COUNTY, VIRGINIA

By: ____________________________
    (Signature)

    ____________________________
    (Name - Type or Print)

County Purchasing Agent or Authorized Agents
    (Title)

Dated: ____________________________

A20
OFFEROR DATA SHEET

NAME OF OFFEROR: ________________________________

ADDRESS:  ________________________________________

_________________________________________________

E-MAIL ADDRESS: __________________________________

Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service Representative: _____________________________
Telephone Number: (___) ___________________________
E-Mail Address: _________________________________

Fiscal Representative: _____________________________
Telephone Number: (___) __________________________
E-Mail Address: _________________________________

Payment Address, if different from above:

_________________________________________________________________

_________________________________________________________________

Purchase Order Address, if different from above:

_________________________________________________________________

_________________________________________________________________
BUSINESS CLASSIFICATION SCHEDULE

PLEASE CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING IN STEP 1. STEP 2 IS OPTIONAL. This designation is requested of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc. Fairfax County does not certify business classifications nor does it establish preferences or set-asides for specific classifications.

Examples:
- A small, Asian women-owned business would mark “Small” in Step 1, then “Women-Owned” and “Minority-Owned” in Step 2
- A small, service-disabled veteran and women-owned business would mark “Small” in Step 1, then “Women-Owned” and “Service-Disabled Veteran-Owned” in Step 2
- A government agency/public body would ONLY mark “Government Agency/Public Body” in Step 1

NAME OF BUSINESS: __________________________________________________________

LAST 4 DIGITS OF TIN/EIN: ____________ SIGNATURE: __________________________________________________________________________

| Step 1: Please indicate the classification of your business/organization. Select ONLY one (1) option. |
|-------------------------------------------------|---------------------------------|-----------------|-----------------|-----------------|
| □ Small                                         | □ Large                         | □ Non-Profit     | □ Government Agency/Public Body | □ Shelter Workshop |

<table>
<thead>
<tr>
<th>Step 2 (OPTIONAL): Please indicate what type of ownership your business/organization consists of. You may choose MORE than one (1) option.</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Women-Owned</td>
</tr>
<tr>
<td>□ Minority-Owned</td>
</tr>
<tr>
<td>□ Service-Disabled Veteran-Owned</td>
</tr>
</tbody>
</table>

DEFINITIONS

Small Business/Organization - “Small business” means a business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of these individual owners shall control both the management and daily business operations of the small business.

Minority Business - is a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least 51% of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native American, Eskimo, or Aleut.

Women-Owned Business - a business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

Service-Disabled Veteran - means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Service-Disabled Veteran-Owned Business - is a business that is at least 51 percent owned by one or more service-disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service-disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service-disabled veterans.

Shelter Workshop - a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy. These services may include physical rehabilitation, training in basic work and life skills (e.g., how to apply for a job, attendance, personal grooming, and handling money), training on specific job skills, and providing work experience in the workshop.
VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The offeror:

☐ is a corporation or other business entity with the following SCC identification number: ____________________________ -OR-

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust -OR-

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from offeror’s out-of-state location) -OR-

☐ is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned offeror’s current contacts with Virginia and describes why whose contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals: ☐
BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of Fairfax County, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

• If you currently have a Fairfax County business license, please submit a copy with your proposal.

• Do you have an office in:  
  • Virginia □ Yes □ No  
  • Fairfax County □ Yes □ No

• Date business began/will begin work in Fairfax County

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County

_____________________________________________________________
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__________________________  ____________________________
Signature                        Date

Complete and return this form or a copy of your current Fairfax County Business License with your proposal.
CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs issued by the General Services Administration.

2. “Principals,” for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: ________________________________

Signature/Date: ________________________________/________________

Company Name: ________________________________

Address: ________________________________

City/State/Zip: ________________________________

SSN or TIN No: ________________________________
Certification Regarding Ethics in Public Contracting

In submitting this proposal, and signing below, Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

1. I have not given any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any public employee or official have official responsibility for a procurement transaction.

2. I have given a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to a public employee or official have official responsibility for a procurement transaction, but I received consideration in substantially equal or greater value in exchange.

If 2 is selected, please complete the following:

Recipient: _______________________________________________________
Date of Gift: _____________________________________________________
Description of the gift and its value:
____________________________________________________________________
____________________________________________________________________
Description of the consideration received in exchange and its value:
____________________________________________________________________
____________________________________________________________________

Printed Name of Offeror Representative: _____________________________
Signature/Date: ___________________________________________________________________/ _______________
Company Name: _______________________________________________________
Company Address: _____________________________________________________
City/State/Zip: ____________________________________________________________________________

This certification supplements but does not replace the requirements set forth in paragraph 64 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation
Request for Protection of Trade Secrets or Proprietary Information Pursuant to Article 2, Section 5.C.3 of the Purchasing Resolution and Va. Code Ann. § 2.2-4342(F)

This form is provided as a courtesy to assist vendors desiring to protect trade secrets and proprietary information from disclosure under the Virginia Freedom of Information Act. In order to receive protection, you must (a) invoke the protection prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected, and (c) state the reason(s) why protection is necessary. Each of these requirements must be met with respect to the particular information for which protection is sought.

a) Submission of this form with or without other reference to Article 2, Section 5.C.3 of the Purchasing Resolution or Va. Code Ann. § 2.2-4342(F) shall satisfy the invocation requirement with respect to data or other materials clearly identified herein.

b) Identify the specific data or other material for which protection is sought. Suggested forms of designation include: listing the Proposal Section, Tab, or Page numbers; attaching to this form a copy of the table of contents from your Proposal with the relevant trade secret or proprietary contents highlighted; or identifying herein a document stamp used within the Proposal to designate the relevant materials (e.g. “all portions of the Proposal marked “Proprietary” or “Trade Secret””). NOTE: The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable.

c) For each distinct section of data or other information identified in response to paragraph b), above, state the reason(s) why protection is necessary. NOTE: Your explanation must do more than simply stating the materials are “proprietary,” or “trade secrets,” or “not publicly available.” You may attach additional sheets to this form as needed.

Use of this form does not guarantee protection. It is incumbent upon each vendor to meet the prerequisites for protection of their trade secrets or proprietary information. Provision of this form does not constitute legal advice; you are encouraged to consult with your legal counsel prior to designation of materials for protection.

<table>
<thead>
<tr>
<th>DATA/MATERIAL TO BE PROTECTED</th>
<th>SECTION NO., &amp; PAGE NO.</th>
<th>REASON WHY PROTECTION IS NECESSARY</th>
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C1
COST PROPOSAL SUMMARY

Each Offeror is encouraged to use the specified Index for the applicable lease term for the period of the Contract:

(a) 3-Year Lease Term: The 3-Year ICE SWAP Rate as published on the report date ("the Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark Administration Market ("ICE Benchmark") on a weekly average basis for the week preceding the Acceptance Date
(b) 4-Year Lease Term: The 4-Year ICE SWAP Rate as published on the report date ("the Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark Administration Market ("ICE Benchmark") on a weekly average basis for the week preceding the Acceptance Date
(c) 5-Year Lease Term: The 5-Year ICE SWAP Rate as published on the report date ("the Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark Administration Market ("ICE Benchmark") on a weekly average basis for the week preceding the Acceptance Date
(d) 7-Year Lease Term: The 7-Year ICE SWAP Rate as published on the report date ("the Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark Administration Market ("ICE Benchmark") on a weekly average basis for the week preceding the Acceptance Date
(e) 10-Year Lease Term: The 10-Year ICE SWAP Rate as published on the report date ("the Daily Rate") on the Intercontinental Exchange, Inc. website under ICE Benchmark Administration Market ("ICE Benchmark") on a weekly average basis for the week preceding the Acceptance Date

Each Offeror should indicate the percentage of each index, spread (if any) for each of the lease terms stated below assuming market conditions as of close of business, November 22, 2019.

<table>
<thead>
<tr>
<th>Lease Term</th>
<th>Discount (Percentage of Index)*</th>
<th>Index (Site Specific Index)</th>
<th>Spread (if any)</th>
<th>Calculated Rate as of November 22, 2019</th>
<th>Prepayment Terms**</th>
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<tr>
<td>3 Years</td>
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<td>4 Years</td>
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<td>10 Years</td>
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* Offerors may propose an alternate ICE Benchmark index term or an alternate index for determining the Lease Rate
** Specify penalty amount and timeframe.

Example: Lease Rate = Current ICE Interest Rate Swap Index ("the ICE Index") multiplied by the Discount plus the Spread. If the Current ICE Interest Rate Swap Index is 3% and the Discount bid is 65% and the Spread bid is 40 basis points, the Lease Rate would be 3% X 65% plus 40 basis points or 2.35%.
AFFIRMATION OF LEGALLY REQUIRED CONTRACT TERMS

BY SIGNING THIS AFFIRMATION, THE OFFEROR REPRESENTS THAT IT UNDERSTANDS THAT THE FOLLOWING CONTRACT TERMS ARE REQUIRED BY LAW AND CANNOT BE VARIED, REVISED, AMENDED, CHANGED, OR OTHERWISE NEGOTIATED:

1. **Funding:** Section 4.4 of the Master Lease Agreement (Attachment A).

2. **Non-discrimination**—During the performance of this contract, the Contractor agrees as follows:
   a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
   b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
   c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
   d. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of Fairfax County, Virginia, as reenacted or amended.

3. **Authorization to Conduct Business in the Commonwealth:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

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

5. Contractual Disputes:

a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent’s decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.

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

6. Drug Free Workplace: During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.


8. Audit of Records: The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment.
AFFIRMATION OF LEGALLY REQUIRED CONTRACT TERMS

9. **Prohibition on the Use of Certain Products and Services:** Fairfax County may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.

Signature/Date:__________________________________________/____________________________________

Printed Name/Title:__________________________________________/____________________________________

Company Name:__________________________________________