

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

CONTRACT NO. 2015001020

**CONTRACT TO PROVIDE
FIRE PUMPER TRUCKS AND
LADDER TRUCKS**

This Contract (the "Contract") is entered into as of this 10th day of November 2014 (the "Effective Date"), by and between Smeal Fire Apparatus Co., a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a political subdivision of the State of North Carolina (the "City").

Statement of Background and Intent

- A. The City issued An Invitation to Bid (ITB Number 269-2015-004) dated August 19, 2014 requesting bids from qualified firms to provide the City with Fire Pumper Trucks and Ladder Trucks hereafter referred to as ("Products"). This Invitation to Bid, together with all attachments and any amendments, is referred to herein as the "ITB".
- B. The Company submitted a bid in response to ITB # 269-2015-004 on September 22, 2014. This bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The City awarded this contract on November 10, 2014 to Company to provide Fire Pumper Trucks and Ladder Trucks to the City all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

- 1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated into and made a part of this Contract by reference:

- Exhibit A: **Pricing Sheet**
- Exhibit B: **Terms and Conditions**
- Exhibit C: **Special Conditions**
- Exhibit D: **Specifications**
- Exhibit E: **Insurance Requirements**
- Exhibit F: **Bid Response Forms**
- Exhibit G: **Additional Materials**

Each reference to the Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. The materials in **Exhibit G** shall be deemed incorporated into this Contract only to the extent they do not conflict with the main body of this Contract or any of the other Exhibits. Any conflict between **Exhibit G** and any other Exhibit shall be resolved in favor of the other Exhibit. Any limitations of liability, limitations of warranty, exclusion of damages or similar terms contained in **Exhibit G** shall be deemed in conflict and shall be excluded. Each reference to Smeal Fire Apparatus Co. in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):

- 2.1. **EFFECTIVE DATE.** The term "Effective Date" refers to the effective date identified in the first paragraph of this Contract.
- 2.2. **PRODUCTS.** The term "Products" shall mean Police Uniforms and Related Equipment and all other related items the Company agreed to provide to the City in its Bid.
- 2.3. **SERVICES.** The term "Services" shall include all services that the Company agreed to provide to the City in its Bid.

3. **TERM.**

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

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

The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits. Except as set forth on **Exhibit A**, the prices set forth in **Exhibit A** constitute all charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services.

5. **COMPENSATION.**

The City shall pay the Company for the Products and Services delivered in compliance with the Specifications at the **unit prices** set forth in **Exhibit A**. This amount constitutes the maximum fees and charges payable to the Company in the aggregate under this Contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in **Exhibit C**. The Company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in **Exhibit A**.

6. **BILLING.**

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

- 1. Option 1 – E-mail one copy of each invoice to cocap@charlottenc.gov. Company shall not mail invoices that have been sent via e-mail.
- 2. Option 2 – Mail one copy of each invoice to:

City of Charlotte Accounts Payable
PO Box 37979
Charlotte, NC 28237-7979
Attn: Fire

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

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

7. GENERAL WARRANTIES.

Company represents and warrants that:

- 7.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Nebraska, and is qualified to do business in North Carolina;
- 7.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
- 7.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;
- 7.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
- 7.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 7.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.

8. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

Company represents warrants and covenants that:

- 8.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
- 8.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 8.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 8.4 The Company and each of its subcontractors have complied and shall comply in all

material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the products and services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.

9. **TERMINATION.**

9.1 *TERMINATION WITHOUT CAUSE.* The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.

9.2 *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or
- (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

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

9.3 *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.* By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- 9.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or
- 9.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as

required by this Contract, or failure to provide the proof of insurance as required by this Contract.

- 9.4 **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.** Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 9.5 **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.
- 9.6 **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 9.7 **AUTHORITY TO TERMINATE.** The City Manager or their designee is authorized to terminate this Contract on behalf of the City.
10. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition services that the Company shall perform if requested by the City include but are not limited to:
- a. Working with the City to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and
 - b. Notifying all affected vendors and subcontractors of the Company of transition activities;
 - d. Performing the transition service plan activities;
 - e. Answering questions regarding the products and services on an as-needed basis; and
 - f. Providing such other reasonable services needed to effectuate an orderly transition to a new system.
11. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as

participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.

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

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

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

13. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.
14. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City's premises. The Company agrees that its

personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the City when on the city's premises.

15. **DRUG-FREE WORKPLACE.** The City is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Contract:
- 15.1 Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;
 - 15.2 Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
 - 15.3 Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
 - 15.4 Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
 - 15.5 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
 - 15.6 Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

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

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

For The Company:	For The City:
Mark Huber	David Tate, Procurement Officer
Smeal Fire Apparatus Company	Procurement Management Division
610 West 4 th Street	600 East Fourth Street
Snyder, NE 68664	Charlotte, NC 28202
Phone: 402-568-2224	Phone: 704-336-5669
Fax: 402-568-2346	Fax: 704-632-8520
E-mail: sales@smeal.com	E-mail: dtate@ci.charlotte.nc.us

With Copy To:	With Copy To:
	Cindy White
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: cwhite@ci.charlotte.nc.us

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

17. MISCELLANEOUS

- 17.1 ENTIRE AGREEMENT. This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract
- 17.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Key Business Executive, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.
- 17.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 17.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in **Section 17.8** constitutes an assignment.
- 17.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

- 17.6 NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 17.7 WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 17.8 CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 17.9 NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.
- 17.10 FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 17.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.
- 17.12 E-VERIFY. As a condition for payment under this Contract, Company shall: (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"); and (ii) cause each subcontractor under this Contract to comply with such E-Verify Requirements as well. Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Company or any subcontractor to comply with the E-Verify Requirements.
18. **NON-APPROPRIATION OF FUNDS.** If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were

appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

19. **CONFIDENTIALITY.**

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

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

19.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services*

19.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories 19.1.3 through 19.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

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

19.2. **RESTRICTIONS.** Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

19.2.1. Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.

19.2.2. Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.

19.2.3. Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

19.2.4. Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.

19.2.5. Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.

19.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

- 19.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 19.2.8. Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- 19.2.9. Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.
- 19.3. EXCEPTIONS. The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:
- 19.3.1. Was already known to Company prior to being disclosed by the City;
- 19.3.2. Was or becomes publicly known through no wrongful act of Company;
- 19.3.3. Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
- 19.3.4. Was used or disclosed by Company with the prior written authorization of the City;
- 19.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
- 19.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

Date _____

Total Bid Price must include all equipment, labor, delivery, installation, consultation, vendor profit and all other costs associated with this project. No additional cost will be allowed.

Payment Terms: _____

The undersigned hereby certifies the Bidder has read the terms of this bid document, including the sample contract (Section 7) and is authorized to bind the firm to the information herein set forth.

Date: September 19, 2014

Smeal Fire Apparatus Co.
Legal Name of Firm

BY: [Signature]

Mark Huber, President
Name and Title of Person Signing (please print)

Contract #: 2015001020
Vendor #: 77002

EXHIBIT A PRICING SHEET

Section 6 Required Forms – Form Three

PRICING SHEET ITB # 269-2015-004 FIRE PUMPER TRUCKS AND LADDER TRUCKS

The undersigned proposes to furnish the following items in strict conformance to the bid specifications and bid invitation issued by the City of Charlotte for this bid. Any exceptions are clearly marked in the attached copy of bid specifications. Please do not include taxes in your bid.

BIDS ARE DUE NO LATER THAN 2:00 P.M., SEPTEMBER 22, 2014

Payment Option 1: 100% paid upon successful acceptance of unit			Unit Price Bid				
Description	Manufacturer & Model Number	Estimated Quantity	Year #1	Year #2	Year #3	Year #4 (optional)	Year #5 (optional)
Item A – Pumper, 500 Gallon Tank	Smeal	8	579,126.	593,604.	608,444.	623,655.	639,247.
Item B – Pumper, 500 Gallon Tank, Downtown High Pressure	Smeal	2	638,214.	654,169.	670,524.	687,287.	704,469.
Item C – Tanker, 1000/300 Gallon	Smeal	1	616,819.	632,239.	648,045.	664,247.	680,853.
Item D – 105' Rear Mount Aerial	Smeal	5	904,872.	927,494.	950,681.	974,448.	998,809.

(Please express yearly price as % or actual dollars increase per unit over base bid cost)

Delivery: 270-330 Calendar Days ARO

Payment Option 2: 80% paid upon issue of purchase order and 20% upon acceptance of unit.			Unit Price Bid				
Description	Manufacturer & Model Number	Estimated Quantity	Year #1	Year #2	Year #3	Year #4 (optional)	Year #5 (optional)
Item A – Pumper, 500 Gallon Tank	Smeal	8	561,285.	575,317.	589,700.	604,443.	619,554.
Item B – Pumper, 500 Gallon Tank, Downtown High Pressure	Smeal	2	618,235.	633,691.	649,533.	665,772.	682,416.
Item C – Tanker, 1000/300 Gallon	Smeal	1	597,329.	612,262.	627,569.	643,258.	659,340.
Item D – 105' Rear Mount Aerial	Smeal	5	877,836.	899,782.	922,276.	945,333.	968,967.

(Please express yearly price as % or actual dollars increase per unit over base bid cost)

Delivery: 270-330 Calendar Days ARO

The City reserves the right to award contract(s) by payment option or combination of payment options, whichever is in the best interest of the City.

Section 6
Required Forms – Form Three

NOTE: You are advised that the appropriate PPI Commodity code that includes fire trucks is 14302, as has been confirmed with the Bureau of Labor Statistics. (Formally SIC 3711#3B and now NAICS 336211 for the PPI Industry code) The Commodity code 14302 may be used as the price escalation index using the monthly percent data average for the most current available twelve months on the contract anniversary date.

****PLEASE NOTE:** There must be a list of any and all exceptions to the specifications and standard warranty included in cost options. The term "year" in the above table is defined as the contract term year.**

THE UNDERSIGNED PROPOSES TO FURNISH THE ABOVE ITEMS IN STRICT CONFORMANCE TO THE BID SPECIFICATIONS AND BID INVITATION ISSUED BY THE CITY OF CHARLOTTE FOR THIS BID. ANY EXCEPTIONS MUST BE LISTED, CLEARLY MARKED, AND DETAILED ON A SEPARATE SHEET OF PAPER.

Total Bid Price must include all equipment, labor, delivery, installation, consultation, vendor profit and all other costs associated with this project. No additional cost will be allowed.

Payment Terms: _____

The undersigned hereby certifies the Bidder has read the terms of this bid document, including the sample contract (Section 7) and is authorized to bind the firm to the information herein set forth.

Date: September 19, 2014

Smeal Fire Apparatus Co.
Legal Name of Firm

BY: 

Mark Huber, President
Name and Title of Person Signing (please print)

EXHIBIT B TERMS AND CONDITIONS

- 2.1 **Contract Types:** The Contract resulting from this Invitation to Bid will be of the type indicated below:

___ **Definite Quantity:** The Contract will be a fixed-price contract that provides for delivery of a specified quantity of Products and Services either at specified times or when ordered.

X **Indefinite Quantity:** The Contract will be a unit price contract for an indefinite amount of Products and Services to be furnished at specified times, or as ordered. In some cases, indefinite quantity contracts may state a minimum quantity that the City is obligated to order. The City may make available to Bidders information regarding the City's purchase history or projected estimates of the approximate quantity of Products that will be needed. The City makes no representations as to the accuracy of such information. Each Bidder is required to perform its own due diligence on which to base its bid. Inaccuracy of purchase history or projected quantity estimates provided by the City will not give rise to any claim against the City, or entitle any to rescind its bid or terminate or amend the Contract.

- 2.2 **Terms of Contract:**

X (A) **Unit Price Contract:** Contract awarded is for a unit price when product and service needs are based upon indefinite quantities, and where orders will be based on actual needs that may exceed or be less than projections. All expenditures under a unit price contract are contingent upon appropriations having been made by Charlotte City Council.

Contract Terms and Renewal Options: The contract term shall be for a period of three (3) years from the date of award. The City at its option may extend the contract for up to two (2) additional one-year extensions unless the Company objects in writing at least ninety (90) days prior to the beginning of the extension term.

___ (B) **One Time Purchase:** Contract awarded is for a specific quantity purchased at one time.

- 2.3 **Notice to Proceed:** The Company shall not commence work or make shipment under this Invitation to Bid until duly notified by receipt of an executed Contract from the City. If the Company commences work or makes shipment prior to that time, such action is taken at the Company's risk, without any obligation of reimbursement by the City.

- 2.4 **Delivery Time:** When delivery time is requested in this Invitation to Bid, (whether in the form of a specific delivery date or maximum number of days for delivery) **time is of the essence.** Each Bid shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.

- 2.5 **Prices Are Firm:** Each Bidder warrants the bid price(s), terms and conditions quoted in its bid shall be firm for acceptance by the City for a period of one hundred twenty (120) **calendar days** from the date of the Bid opening. Once award is made and a Contract is in place, prices shall remain firm and fixed for the entire Contract period, unless

otherwise allowed in the Special Conditions and stated in the Bid. If your Bid includes price increases over the term of the Contract, such increases must be clearly designated on Form Three of the Bid Response Package (Pricing Sheet).

- 2.6 Prompt Payment Discounts:** Bidders are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 2.7 Quality:** Unless this Invitation to Bid specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Invitation to Bid shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.

Whenever this Invitation to Bid or any other part of the Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Invitation to Bid or the Contract.

- 2.8 Inspection at Company's Site:** The City reserves the right to inspect the equipment, plant, store or other facilities of a Company prior to Contract award, and during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).
- 2.9 Preparation For Delivery:**
- (A) **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
 - (B) **Marking.** All cartons shall be clearly identified with the City purchase order number and the name of the department or key business making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc.).
 - (C) **Shipping.** The Company shall follow all shipping instructions included in this Invitation to Bid, the City's purchase order or in the Contract with the City.
- 2.10 Acceptance of Products/Services:** The Products delivered under this Invitation to Bid shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with

the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Invitation to Bid do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.

- 2.11 Guarantee:** Unless otherwise specified by the City, the Company unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.
- 2.12 Manufacturer or Dealer Advertisement:** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.
- 2.13 Right to Cover:** If the Company fails to comply with any term or condition of the Contract or the Company's response to this Invitation to Bid, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:
- (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
 - (B) Recover from such Company the difference between what the City paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Company's response to this Invitation to Bid.
- 2.14 Right to Withhold Payment:** If a Company breaches any provision of the Contract, the City shall have the right to withhold all payments due to the Company until such breach has been fully cured.
- 2.15 Certification of Independent Price Determination:** By submission of a Bid, the Company certifies, and in the case of a joint Bid each party thereto certifies as to its own organization, that in connection with this procurement:
- (A) The prices in the Bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; and
 - (B) Unless otherwise required by law, the Company has not knowingly disclosed the prices that have been quoted in this bid directly or indirectly to any other Bidder or to any competition prior to the opening of the bid.
 - (C) No attempt has been made or will be made by the Company to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.
- 2.16 Subcontracting:** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and

shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

- 2.17 Compliance with Laws:** All Products and Services delivered under this Invitation to Bid shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.
- 2.18 E-Verify:** As a condition for payment under this Contract, Company shall: (i) comply with the E-Verify requirements set forth in Article 2 of Chapter 64 of the North Carolina General Statutes (the "E-Verify Requirements"); and (ii) cause each subcontractor under this Contract to comply with such E-Verify Requirements as well. Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of any failure by Company or any subcontractor to comply with the E-Verify Requirements.
- 2.19 City License Requirement:** A current City of Charlotte and/or Mecklenburg County Business License is required for a Company who either personally or through agents, solicits business within City limits; or picks up and/or delivers Products or delivers Services within City limits. All questions regarding licensing should be directed to the Business Tax Collections Office, 704-336-6315.
- 2.20 No Liens:** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
- 2.21 Other Remedies:** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 2.22 Amendment:** No amendment or change to the Contract shall be valid unless in writing and signed by both parties to the Contract.
- 2.23 Governing Law and Jurisdiction:** North Carolina law shall govern the interpretation and enforcement of the Contract, and any other matters relating to the Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to the Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By submitting a response to this Invitation to Bid, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 2.24 Binding Nature and Assignment:** The Contract shall bind the parties and their successors and permitted assigns. Neither party may assign the Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in this Invitation to Bid shall constitute an assignment.
- 2.25 No Delay Damages:** Under no circumstances shall the City be liable to the Company for any damages arising from delay, whether caused by the City or not.
- 2.26 Force Majeure:** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed

a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

- (A) If such failure or delay:
 - 1. could not have been prevented by reasonable precaution;
 - 2. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - 3. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
- (B) An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (C) Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Contract by written notice to the Company.
- (D) Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

2.26 Severability: The invalidity of one or more of the phrases, sentences, clauses or sections contained in the Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of the Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and the Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

2.27 No Publicity: No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference the Contract or the City in any manner without the prior written consent of the City. Notwithstanding the foregoing, the parties agree that the Company may list the City as a reference in responses to requests for Bids, and may identify the City as a customer in presentations to potential customers.

2.28 Waiver: No delay or omission by either party to exercise any right or power it has under the Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of the Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver

of any provision of the Contract shall be effective unless in writing and signed by the party waiving the rights.

- 2.29 Survival of Provisions:** Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to all definitions and a list of surviving Sections which will be included in the final Contract.
- 2.30 Change In Control:** In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating the Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in the Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 2.31 Commercial Non-Discrimination:** The City has adopted a Commercial Non-Discrimination Ordinance that is set forth in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). As a condition of entering into this Contract the Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace.

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

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

The Company understands and agrees that violation of this Commercial Non-

Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

2.32 Company's Background and Experience.

DO NOT INCLUDE THE BACKGROUND, EXPERIENCE, AND/OR FINANCIAL INFORMATION REQUESTED IN THE SECTION WITH YOUR BID SUBMISSION.

Background, experience, and/or financial information may be requested by the City, at its sole discretion, during the evaluation process. Company must make information in this section readily available and have the ability to provide to the City, **without exception, within twenty-four (24) hours** upon the City's request during the bid evaluation process.

Please answer the following questions as completely as possible, placing your answer immediately after the question to which it applies. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

2.32.1 Official Name.

Provide the legal name and address of the company and state of incorporation submitting the bid. Also identify all subcontractors or joint venture partners.

2.32.2 Company's Background.

Provide an overview and history of your company. How long has the company been providing Services to local governments? Describe the organization and ownership. Include an organization chart.

2.32.3 Company's Structure.

- a) Describe your total organization, including any parent companies, subsidiaries, affiliates, and other related entities;
- b) Describe the ownership structure of your organization, including any significant or controlling equity holders;
- c) Provide a management organization chart of your overall organization, showing director and officer positions and names and the reporting structure. Provide detailed information for the Fire Pumper Trucks and Ladder Trucks business segments of your organization, showing the reporting structures within these segments and among these segments and the overall organization; and
- d) Describe any organizational changes such as divestitures, acquisitions, or spin-offs involving your Fire Pumper Trucks and Ladder Trucks business segments that have occurred in the latest two (2) years or are anticipated in the future.

2.32.4 Analytical Approach.

The evaluation of financial viability of the Company was developed with one primary goal in mind: to protect the City from risk of default by a selected Company due to financial instability. Various analytical techniques will be used to assess the financial strength and stability of each Company, focusing on profitability, solvency, and efficiency. The analysis will include an evaluation of specific financial indices and ratios in an effort to maximize objectivity and provide measures that are more directly comparable among Companies.

Other factors which may impact the financial position of a Company, or which provide additional evidence of the financial strength of a Company, will also be assessed. These factors include years of experience in providing similar Services, and demonstration of the ability to obtain sufficient levels of liability and property damage insurance.

Relevant information regarding recent litigation and bankruptcy filings, which may materially affect a Company's financial position, will be examined. In addition to credit ratings and credit reports, bank and vendor references will be used to evaluate the credit worthiness of each Company.

2.32.5 Requests for Financial Information.

If the Company does not have the audited financial statements requested, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this ITB. Failure to provide adequate financial information may result in the exclusion of your Bid from the procurement process.

Upon request, please furnish the following financial information for the proposing Company(s), guarantor(s), and any sub-contractor included as having a significant role (defined as providing more than fifteen percent (15%) of the services) in providing Services to the City:

- a) Include in the statement of guarantor(s), as described in Section 1.24. Guarantor, evidence of the ability of the guarantor to meet the short-term funding needs of this project;
- b) Evidence that demonstrates the ability to obtain the insurance as required in Section 5.2. Such insurance should provide coverage in the stated amount for each occurrence of bodily injury and for each occurrence of property damage with coverage for products/completed operations, personal injury liability, and contractual liability;
- c) Annual audited financial reports for each of the past five (5) fiscal years, prepared in accordance with Generally Accepted Accounting Principles (GAAP), and all relevant notes;
- d) The most recent Form 10-K and Form 10-Q filed with the Securities and Exchange Commission (SEC); or, if the contractor is not regulated by the SEC, then the most recent quarterly financial report.
- e) Description of any material adverse changes in financial position within the past five (5) years; any material changes in the mode of conducting business; any bankruptcy proceedings, mergers, acquisitions, takeovers, joint ventures, and/or divestitures within the past five (5) years. In addition, provide a clear and definitive statement of the following:
 - Years of providing similar Services by the Company and/or predecessor organization;
 - Whether or not the Company (and/or predecessor, guarantor or subcontractor) has declared bankruptcy within the last five (5) years;
 - Description of the financial impact of any past or pending legal proceedings and judgments, as identified in Section 2.32.7 that could materially affect the Company's financial position or ability to provide

Services to the City. This information will be reviewed and assessed in accordance with the information provided by the Company, in the above referenced Section;

- All credit reports, credit bulletins, and any other published statements by the most recognized agencies (Standard & Poors Rating Group, Moody, Investor Services, Dun & Bradstreet, and Value Line) that have been issued or published about the entity within the past five (5) years;
- The prospectus or offering statement for the entity's latest security or equity offering;
- The company name, contact person, telephone number, and fax number of at least two (2) references from bank or institutional lenders which have extended credit to the entity in the past five (5) years; or if the entity has not applied for credit in the past five (5) years, the contact person's name, telephone number, and fax number of at least two (2) references from banks with which the entity conducts business;
- The company name, contact person, telephone number, and fax number of at least two (2) credit references from suppliers/vendors; and
- Any additional information, which the Company believes, is appropriate to fully reflect the financial strength of the entity.

Failure to provide such information is cause for rejection of the Company's Bid at the sole discretion of the City. For any subcontractor providing more than fifteen percent (15%) of the Services, the City reserves the right, at its sole discretion, to reject the subcontractor if it fails to meet minimum financial requirements. In the event the City's Evaluation Committee rejects the subcontractor, the Contractor must assume the responsibilities of the subcontractor or find a replacement satisfactory to the Evaluation Committee.

2.32.6 Proposed Project Team.

If the Company's bid submission will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent (15%) of the Services, all participating companies must be identified. Provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated. Identify the extent, if any, of Small Business Enterprise participation in this Project.

2.32.7 Past or Pending Judgments.

For purposes of this Section, the term "Related Entity" means any parent, subsidiary, affiliate or guarantor of the Company. For all matters involving the Company providing products or services to local, state or federal government, submit declarations of the current status of any past or pending criminal, civil, or administrative litigation against the Company or any Related Entity. For all matters involving the Company providing products or services to local, state or federal government, in addition, submit declarations of the current status of all pending criminal, civil or administrative litigation that commenced within the past five (5) years in North America, whether or not it involves local governments, against the Company or Related Entity. (For the purpose of the declarations, current officer, shall be defined to include those individuals who are presently

serving or who have served within the past two (2) years as an officer of the company.) State whether there are any cases pending against the Company, a Related Entity, officer of either, that, if adversely resolved, would pose a material risk of insolvency to either the Company or Guarantor or materially affect the Company's or Guarantor's ability to perform their obligations.

The respondent may choose not to submit records for matters that were resolved prior to the time that the subsidiary or affiliate became associated with the parent company, as long as that subsidiary or affiliate will not be involved in the provision of Services to the City. All records for subsidiaries or affiliates of the parent company that may be involved in the provision of Services to the City must be included.

The City reserves the right to request additional information to explain any of the above citations/violations.

2.32.8 Financial and Legal Considerations.

If the audited financial statements requested in this section are not available, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that each entity identified is financially capable of performing the Services required by the Company in performance of the Services described in this ITB. Failure to provide adequate financial information may result in the exclusion of your Bid from the procurement process.

- a) For each entity identified in Section 2.32.3a, specify the entity's total revenue, number of employees, products and services, affiliated companies, and other descriptive information;
- b) For each entity identified in Section 2.32.3a, provide relevant documents that describe the entity's financial status, such as audited financial statements, annual reports, or 10-K reports, and the DUNS number; and
- c) If the Company does not have the audited financial statements requested above, it is the responsibility of the Company to provide the City with information of sufficient quantity and with verifiable sources to ascertain that the Company is financially capable of performing the Services described in this ITB. Failure to provide adequate financial information may result in the exclusion of your Bid from the procurement process.

2.32.9 Management Approach.

- a) Describe your organization's customer service philosophy and describe how it is communicated and reinforced throughout the organization;
- b) Describe your organization's approach to total quality management, and describe your organization's total quality plan;
- c) Describe your organization's continuous improvement program and how your current customers benefit from your service improvements; and
- d) Describe your organization's experiences in adapting to changing technologies.

2.32.10 Personnel Management.

- a) Describe the key individuals, along with their qualifications, professional certifications and experience that would comprise your organization's team

- for providing Services to the City;
- b) Explain how your organization ensures that personnel performing technical support services are qualified and proficient;
 - c) Describe your organization's approach, policies, and experience with respect to deployment of your personnel; and
 - d) Has your organization been the subject of a dispute or strike by organized labor within the last five (5) years? Describe the circumstances and the resolution of the dispute.

2.32.11 References.

Provide an organization name, address, contact name, and contact telephone number for five (5) customers of comparable size and scope of service that the Company has been under contract with to provide Fire Pumper Trucks and Ladder Trucks for during the past two (2) years.

**EXHIBIT C
SPECIAL CONDITIONS**

- 3.1 Price Adjustment As Part of the Bid:** To submit price adjustments as part of your Bid, you must: (a) comply with any limitations or instructions that are stated in this ITB; and (b) state very clearly in the Price Sheet of your Bid Response Forms the proposed price adjustments or, if permitted, the price adjustment formula. Restrictions and instructions regarding price adjustments are provided in the Bid Response Forms. It is important that the Company check for these restrictions and instructions carefully. In some instances price adjustments are not permitted as part of the Bid. In other instances formula price increases are prohibited due to the difficulty they create in comparing Bid prices.
- 3.2 Price Adjustment If Not Included As Part of the Bid:** If price adjustments are not included in your Bid, the price(s) stated in your Bid shall apply for the entire term of the Contract unless the City approves a price adjustment in writing in accordance with the following terms:
- 3.2.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate a Company for inefficiency in operation, increase in labor costs, or for additional profit.
- 3.2.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Management representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally bid.
- City of Charlotte
Shared Services / Procurement Management
600 East Fourth Street
Charlotte, NC 28202
- 3.2.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.
- 3.2.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.
- 3.3 Options and Accessories:** The City may in its discretion purchase from the Company options and accessories beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the bid statutes, and provided the City is authorized by law to make such purchases without a formal bid process.
- 3.4 Documentation:** The Company will provide for all Products purchased under this Invitation to Bid written or electronic documentation that is complete and accurate, and

c. Proof of authorization to work in the United States.

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

- 3.12 Multiple Contract Awards:** The City reserves the right to award to one or multiple Contracts by line item, combination of items, categories, or grand total for the Products and Services required by this ITB if the City deems multiple Contracts to be in the City's best interest.
- 3.13 Bid Bond Requirements:** Each bid shall be accompanied by a Bid Bond, Certified Check or Cash, in the amount of 10% of bid price. The Bid Bond shall be furnished by the manufacturer of the proposed apparatus. Bids shall remain firm for a period of one hundred twenty (120) days. An exception to this requirement shall not be accepted and shall result in the immediate rejection of the bid.
- 3.14 Performance Bond:** The Company shall, within 15 days of executing the contract, supply the City with a 100 percent performance bond. The performance bond shall be furnished by the manufacturer of the proposed apparatus. Bonds in the name of any sales agent or representative company shall not be acceptable. Failure to supply said performance bond shall result in forfeiture of the supplied bid bond to the City.

The performance bond (surety bond) shall cover standard one (1) year warranty period only and shall not cover extended warranties offered by the seller or other component manufacturer.

EXHIBIT D SPECIFICATIONS

- 4.1 Scope:** The scope of this Invitation to Bid (ITB) is to establish a contract for the purchase, delivery and other inherently related activities of the Products and Services and in compliance with the specifications and terms and conditions set forth in this ITB.

All Products and component parts furnished under the Contract shall be new, shall comply with the specifications and terms and conditions set forth in this ITB, and shall operate in full compliance with these Specifications.

- 4.2 Quantities:** The City does not guarantee quantities and will purchase quantities of Products according to actual need during the term of the Contract. The quantities listed in this ITB are estimates only, and may differ substantially from actual quantities ordered. Multiple orders will be placed on an as needed basis during the term of the Contract.

- 4.3 Alternate Products:** Please refer to Section 1.21 and 1.22 for complete details regarding submittal of Alternate Products.

The City cannot be responsible for testing and or accepting every new or evolving product proposed and reserves the right to reject proposed products that do not meet the City's current business model.

- 4.4 Warranty:** All Products supplied under the Contract shall be covered by a manufacturer's written guarantee and/or warranty that such Products will be free from defects in materials, workmanship and performance for a minimum of one year; merchantable and in full conformity with the Specifications set forth in this ITB, industry standards, dimension charts and Company's descriptions, representations and samples. The Company shall administer the warranty on the City's behalf, and shall ensure that the manufacturer repairs or replaces at no charge to the City all Products that violate either the above warranty or the applicable manufacturer's warranty.

4.4.1 The Company shall provide the City with two copies of the manufacturer's written warranty for each item of equipment.

4.4.2 It shall be the responsibility of the manufacturer to pay all shipping and crating costs associated with warranty repairs.

- 4.5 Installation:** Only experienced professionals should install all products. All work must be performed according to the standards established by the terms, specifications, and drawings and meet manufacturer's specifications and industry standards.

- 4.6 Pricing:** Bids shall be submitted as a fixed unit price per item that includes shipping and delivery, any discounts, vendor markup/profit, item cost and storage. No other charges are allowed.

- 4.7 Delivery:** All Products provided under this contract must be delivered F.O.B. Destination. Workdays are Monday through Friday, excluding City, State and Federal recognized holidays. Delivery and freight charges are to be included in discount price. Failure to comply with this requirement shall be cause to terminate this contract unless such failure is confined to infrequent and isolated

instances, which do not involve major purchases.

- 4.7.1 Deliveries must be made to the City of Charlotte/Mecklenburg County Equipment Management Division Equipment Commission/Decommission Facility at the following address: ATTN: Administrative Office, 5550 Wilkinson Blvd, Charlotte, NC 28208.
- 4.7.2 Each order delivered must have a packing slip and copy of invoice enclosed. The packing slip must clearly show the items ordered, unit of measure, contract pricing, items enclosed and identify any items on backorder.
- 4.8 **Delivery Personnel:** All delivery personnel of the Supplier may be subject to background checks at the discretion of the City. Bids shall include company policies regarding selection of personnel who will be frequenting City facilities.
- 4.9 **Invoices:** The Company must submit invoices to the City Finance Department. Invoices must include the item number, description, unit cost, quantity and extended price, and contract or purchase order number of each item purchased. Every invoice must also include the City department that placed the order and submitted to City of Charlotte Accounts Payable per the billing instructions of the subsequent Contract.
 - 4.9.1 It is acknowledged and agreed that having correctly priced invoices is a material element of the proposal to the City. Failure by the Company to submit correct invoices may be grounds for termination of the contract. Without limiting the City's right to terminate the contract for incorrect pricing on invoices, the Company agrees to pay the City a service fee for correcting invoices equal to twenty-five dollars (\$25) for each item incorrectly priced on an invoice. Payment must be in the form of a deduction from other amounts owed to the Company.
 - 4.9.2 Invoices must include only Products and Services that have been delivered and completed.
 - 4.9.3 As a condition of payment, the Company must invoice the City for Products and Services within 60 days after such Products and Services are delivered. The Company waives the right to charge the City for any products or services that have not been invoiced to the City within 60 days after such products or services were delivered.
- 4.10 **Items Under Contract:** The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added will be subject to bid statute requirements. The City may also delete items included in this Contract if the items are no longer needed by the City.
- 4.11 **Customer Service Representative:** The Company must dedicate a Full-Time "Account Executive" for servicing the City. The account executive must be available by cell phone. The cell phone must be operational at all times. All communicational contact, either via phone, email, etc. must be addressed with a response within two (2) business days. The account executive must be available to attend meetings regarding issues upon request. The account executive will be

responsible for providing immediate response and quick resolution of all the service issues and complaints of City personnel. The account executive must have an in-depth knowledge of all items provided in this bid and have immediate access to manufacturers providing the items. He or she must have the ability and authority to make decisions on behalf of their employer enabling them to provide both normal and emergency service as necessary.

- 4.12 Company Personnel Removal or Replacement:** The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide services to the City.
- 4.13 Applicable Laws:** The Company agrees to make itself aware of and comply with, and cause its subcontractors to comply with, all federal, state and local laws, regulations and ordinances relating to the performance of this Contract or to the products and services delivered hereunder, including without limitation E-Verify, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and OSHA. The Company further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this Section has occurred or does occur, the Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.
- 4.13.1 E-Verify Certification:** The Company must complete and submit the E-Verify Certification form included in Section 6 – Form Five. Any bid received without the completed certification included will be deemed nonresponsive and will not be considered for Contract award.
- 4.14 Permitting Responsibilities:** All permits and inspections are the sole responsibility of the Company.
- 4.15 No Limitations on Disclosure.** All Companies agree that the City shall be able to disclose and distribute to any persons or entities, without restriction, all Products, samples and other Products provided under in the course of this bid process or under the Contract. The Company specifically agrees that the City can and will provide samples of the Products provided under this Contract to the Company's competitors in any future procurement process.
- 4.16 Placement of Orders:** All orders will be placed by City designated personnel on an as needed basis for the quantity required at the time during the term of the Contract. Orders will be placed by means of a purchase order, or other approved authorization method.
- 4.17 Product Specifications and Or Equal Standard.** Following this page is a list of Products which are described in part by reference to specific brands and style numbers. The brands names and style numbers are listed only for purposes of description and establishing a quality standard. The City will consider alternate products of equal or better quality ("Alternates"), only if the Company submits samples of such products for testing and evaluation in compliance with Sections 1.21 and 1.22 of this ITB. Any Alternates that are approved by the City will be listed in an Addendum subsequent to issuance of this ITB.

For each of the Products specified, the City lists factors that will be important considerations in determining whether a proposed Alternate is equal to or better than the named brand in meeting the City's requirements. While the City regards these factors as important, the City reserves the right to waive variances from these requirements to the extent the City determines in its sole discretion that such variances will not materially impact whether the Product meets the City's needs. The important considerations listed for each item are not an exclusive list of factors that will be taken into account in determining whether a proposed Alternate meets the City's requirements. The City will consider any factors the City deems relevant to the performance, durability, appearance, comfort, fit, convenience or maintenance requirements for any proposed Alternate.

- 4.18 Product Specifications:** Below is a list of Products which are described by detailed specifications. The City reserves the right to waive variances from these requirements to the extent the City in its sole discretion that such variances will not materially impact whether the Product meets the City's needs. This Section must be completed and returned with the Bid Response.

BIDDER MUST FILL IN BLANKS TO INDICATE COMPLIANCE, OR STATE EXCEPTION FOR OUR ACCEPTANCE. EXCEPTIONS MUST BE LISTED, CLEARLY MARKED, AND DETAILED ON A SEPARATE SHEET PER THE INSTRUCTIONS UNDER EACH BID ITEM'S EXCEPTION TO SPECIFICATIONS SECTION. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RENDER YOUR BID UNRESPONSIVE.

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Contract #: 2015001020
Vendor #:77002

**ITEM A – SPECIFICATION COMPLIANCE PAGES RESPONSE IS IN HEREBY
REFERENCED FOR PAGES 34-167.**

Contract #: 2015001020
Vendor #:77002

**ITEM A – COMPANY CLARIFICATIONS TO SPECIFICATIONS IS IN HEREBY
REFERENCED FOR PAGE 168.**

Contract #: 2015001020
Vendor #:77002

**ITEM B – SPECIFICATION COMPLIANCE PAGES RESPONSE IS IN HEREBY
REFERENCED FOR PAGES 169-307.**

Contract #: 2015001020
Vendor #:77002

**ITEM B – COMPANY CLARIFICATIONS TO SPECIFICATIONS IS IN HEREBY
REFERENCED FOR PAGE 308.**

Contract #: 2015001020
Vendor #:77002

**ITEM C – SPECIFICATION COMPLIANCE PAGES RESPONSE IS IN HEREBY
REFERENCED FOR PAGES 309-441.**

Contract #: 2015001020
Vendor #:77002

**ITEM C – COMPANY CLARIFICATIONS TO SPECIFICATIONS IS IN HEREBY
REFERENCED FOR PAGE 442.**

Contract #: 2015001020
Vendor #:77002

**ITEM D – SPECIFICATION COMPLIANCE PAGES RESPONSE IS IN HEREBY
REFERENCED FOR PAGES 443-603.**

Contract #: 2015001020
Vendor #:77002

ITEM D – COMPANY CLARIFICATIONS TO SPECIFICATIONS IS IN HEREBY
REFERENCED FOR PAGE 604.

Contract #: 2015001020
Vendor #: 77002

**ADDENDUM #1 FROM ITB 269-2015-004 POSTING IS IN HEREBY REFERENCED
FOR PAGE 605-607.**

Contract #: 2015001020
Vendor #:77002

**ADDENDUM #2 – REVISED SPECIFICATION COMPLIANCE RESPONSE FOR ITB
269-2015-004 POSTING IS IN HEREBY REFERENCED FOR PAGE 608.**

EXHIBIT E INSURANCE REQUIREMENTS

5.1 Indemnification. To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

5.2 Insurance: Throughout the term of the Contract, the Company shall comply with the insurance requirements described in this Form. In the event the Company fails to procure and maintain each type of insurance required by this Form, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate the Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance company acceptable to the **City of Charlotte**, authorized to do business in the State of North Carolina:

- A) **Automobile Liability:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident; and, \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.
- B) **Commercial General Liability:** Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the Company, any subcontractor or anyone directly or indirectly employed by

either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, services, completed operations, personal injury liability and contractual liability assumed under the indemnity provision of the Contract.

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

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

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

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

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

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

**EXHIBIT F
BID RESPONSE FORMS**

Section 6
Required Forms – Form One

**BID SUBMISSION FORM
ITB # 269-2015-004
FIRE PUMPER TRUCKS AND LADDER TRUCKS**

This Bid is submitted by:

Company Name: Smeal Fire Apparatus Co.

Representative (printed): Mark Huber

Representative (signed): 

Address: P.O. Box 8
610 West 4th Street

City/State/Zip: Snyder, NE 68664

Telephone: 402-568-2224
(Area Code) Telephone Number

Facsimile: 402-568-2346
(Area Code) Fax Number

E-Mail Address: sales@smeal.com

Number of years in business (optional): 59 years

Number of years associated with manufacturer (optional): _____

It is understood by the Vendor that the City reserves the right to reject any and all Bids, to make awards on all items or on any items according to the best interest of the City, to waive formalities, technicalities, to recover and re-bid this ITB. Bids are valid for one hundred twenty (120) calendar days from Bid Opening.

Smeal Fire Apparatus Co. September 19, 2014
Company Name Date

 Mark Huber
Authorized Signature Please type or print name

Section 6
Required Forms – Form Two

Addenda Acknowledgement Form
ITB # 269-2015-004
Fire Pumper Trucks and Ladder Trucks

Bid/Bid Submission Check List: Confirm by placing a check mark in the space provided that as the bidder or proposer the information listed below has been reviewed and complied with in the submission of a response to this Invitation to Bid/Request for Bids.

- (A) ☒ Addenda acknowledgement. Please contact the Procurement Management Division representative to verify the number of addenda issued.

Procurement Management Rep. Name
David Tate

Telephone Number
704-336-5669

Addenda Receipt: The following confirms receipt of any and all addenda issued for this Invitation to Bid/Request for Bids:

Addendum #	Date Issued
<u>1</u>	<u>9/5/2014</u>
<u>2</u>	<u>9/15/2014</u>

- (B) ☒ Bid/Bid document has been signed by authorized bidder/proposer official.
- (C) ☒ Bid/Bid package has been properly labeled per the instructions. (See Section 1.6, page 3)
- (D) ☒ Bid/Bid Response Package Forms
- Bid Submission - Form One
 - Addenda Acknowledgement - Form Two
 - Pricing Sheet - Form Three
 - Non-Discrimination Certification Compliance - Form Four
 - E-Verify Certification – Form Five
 - Vendor References – Attachment One
 - Specification Compliance Pages – Attachment Two
2. **Exceptions:** The undersigned Bidder agrees to provide all Products and Services requested in the ITB for the price(s) set forth in the Pricing Sheet, all in strict conformance with the terms, conditions and specifications set forth in the ITB (including any addenda or amendments), subject only to the exceptions stated in the chart below. Exceptions representing material changes to Bid terms are grounds for rejection of the Bidder's Bid.

Section 6
Required Forms – Form Two


ITB Section Number	ITB Section Title	Exception and Proposed Change to ITB

The signature below certifies that: (a) the Bidder's Bid complies with the requirements of this Invitation to Bid; (b) that items 1(A) through 1(D) of the above checklist have been verified as complete, and (c) that the Bidder takes no exception to the terms of the ITB other than those listed in the chart contained in this Form. Exceptions to Specifications in Attachment 2 will need to be clearly marked and detailed on a separate sheet per the instructions under each bid item's Exception To Specifications section.

Date: September 19, 2014

Bidder: Smeal Fire Apparatus Co.
Print name of Bidder

By: Mark Huber, President
Print name and title of signatory

Signature: 

The signature below certifies the bid/Bid response complies with the requirements of this Invitation to Bid and that the above items A through D have been verified as complete.

9-19-14 Mark Huber
Date Printed/Typed Name


Signature

Section 6
Required Forms – Form Four

NON-DISCRIMINATION PROVISION

Project: 269-2015-004 FIRE PUMPER TRUCKS AND LADDER TRUCKS

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

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

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

NAME OF COMPANY: Smeal Fire Apparatus Co.

BY: 

TITLE: President

SIGNATURE OF AUTHORIZED OFFICIAL: Mark Huber


DATE: September 19, 2014

Section 6
Required Forms – Form Five

E-VERIFY CERTIFICATION

This E-Verify Certification is provided to the City of Charlotte (the "City") by the company signing below ("Company") as a prerequisite to the City considering Company for award of a City contract (the "Contract").

1. Company understands that:
 - a. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies to enable employers to verify the work authorization of employees pursuant to federal law, as modified from time to time.
 - b. Article 2 of Chapter 64 of the North Carolina General Statutes requires employers that transact business in this state and employ 25 or more employees in this state to: (i) verify the work authorization of employees who will be performing work in North Carolina through E-Verify; and (ii) maintain records of such verification (the "E-Verify Requirements").
 - c. North Carolina General Statute 160A-20.1(b) prohibits the City from entering into contracts unless the contractor and all subcontractors comply with the E-Verify Requirements.
2. As a condition of being considered for the Contract, Company certifies that:
 - a. If Company has 25 or more employees working in North Carolina (whether now or at any time during the term of the Contract), Company will comply with the E-Verify Requirements in verifying the work authorization of Company employees working in North Carolina; and
 - b. Regardless of how many employees Company has working in North Carolina, Company will take appropriate steps to ensure that each subcontractor performing work on the Contract that has 25 or more employees working in North Carolina will comply with the E-Verify Requirements.
3. Company acknowledges that the City will be relying on this Certification in entering into the Contract, and that the City may incur expenses and damages if the City enters into the Contract with Company and Company or any subcontractor fails to comply with the E-Verify Requirements. Company agrees to indemnify and save the City harmless from and against all losses, damages, costs, expenses (including reasonable attorney's fees) obligations, duties, fines and penalties (collectively "Losses") arising directly or indirectly from violation of the E-Verify Requirements by Company or any of its subcontractors, including without limitation any Losses incurred as a result of the Contract being deemed void.


Signature of Company's Authorized Representative

September 19, 2014
Date

Print Name and Title: Mark Huber, President

ATTACHMENT 1

REFERENCES

Company Name: SIGNAL FIRE APPARATUS

List three (3) clients, for whom you have provided services similar to those outlined in this Invitation to Bid, for reference check:

NAME OF FIRM:	<u>CITY of HARRISBURG FIRE DEPT</u>
ADDRESS OF FIRM:	<u>6450 Northern ST</u> <u>HARRISBURG, NC 28075</u>
CONTACT PERSON:	<u>STEVE GILL</u>
TELEPHONE NUMBER:	<u>704-971-5789</u>
FAX NUMBER:	
NAME OF FIRM:	<u>HUNTERSVILLE FIRE DEPT</u>
ADDRESS OF FIRM:	<u>110 S. OLD STATESVILLE RD</u> <u>HUNTERSVILLE, NC 28078</u>
CONTACT PERSON:	<u>CANNY IRVIN</u>
TELEPHONE NUMBER:	<u>704-746-5708</u>
FAX NUMBER:	
NAME OF FIRM:	<u>TOWN of MORRISVILLE FIRE & RESCUE</u>
ADDRESS OF FIRM:	<u>260 TOWN HALL DRIVE</u> <u>MORRISVILLE, NC 27560</u>
CONTACT PERSON:	<u>CLIFF CATES</u>
TELEPHONE NUMBER:	<u>336-516-3625</u>
FAX NUMBER:	

**EXHIBIT G
ADDITIONAL MATERIALS**

ADDITIONAL MATERIALS SUBMITTED BY THE COMPANY ARE HEREBY INCORPORATED BY REFERENCE. SPECIFICATIONS LISTED IN EXHIBIT D OF THIS CONTRACT SHALL SUPERSEDE ANY SPECIFICATIONS LISTED IN THIS EXHIBIT. ANY CONFLIT BETWEEN EXHIBIT G AND ANY OTHER EXHIBIT SHALL BE RESOLVED IN FAVOR OF THE OTHER EXHIBIT.

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**ITEM A – COMPANY PROPOSAL SPECIFICATIONS INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 618-696.**

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**ITEM A – COMPANY CHASSIS PROPOSAL SPECIFICATIONS INFORMATION IS IN
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ITEM A – COMPANY SPECIFICATION DRAWING IS IN HEREBY REFERENCED
FOR PAGE 748.

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**ITEM B – COMPANY PROPOSAL SPECIFICATIONS INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 749-824.**

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**ITEM B – COMPANY CHASSIS PROPOSAL SPECIFICATIONS INFORMATION IS IN
HEREBY REFERENCED FOR PAGES 825-875.**

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ITEM B – COMPANY SPECIFICATION DRAWING IS IN HEREBY REFERENCED
FOR PAGE 876.

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**ITEM C – COMPANY PROPOSAL SPECIFICATIONS INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 877-953.**

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**ITEM C – COMPANY CHASSIS PROPOSAL SPECIFICATIONS INFORMATION IS IN
HEREBY REFERENCED FOR PAGES 954-1005.**

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ITEM C – COMPANY SPECIFICATION DRAWING IS IN HEREBY REFERENCED
FOR PAGE 1006.

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**ITEMS A B C – COMPANY SPECIFICATIONS WARRANTY INFORMATION IS IN
HEREBY REFERENCED FOR PAGES 1007-1017.**

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**ITEM D – COMPANY PROPOSAL SPECIFICATIONS INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 1018-1118.**

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**ITEM D – COMPANY CHASSIS PROPOSAL SPECIFICATIONS INFORMATION IS IN
HEREBY REFERENCED FOR PAGES 1119-1170.**

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ITEM D – COMPANY SPECIFICATION DRAWING IS IN HEREBY REFERENCED
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**ITEM D – COMPANY SPECIFICATION WARRANTY INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 1172-1183.**

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ITEMS A B C D – COMPANY CHASSIS WARRANTY INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 1184-1185.

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**ITEMS A B C D – COMPANY TRANSMISSION WARRANTY INFORMATION IS IN
HEREBY REFERENCED FOR PAGE 1186.**

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ITEMS A B C D – COMPANY BID BOND INFORMATION IS IN HEREBY
REFERENCED FOR PAGES 1187-1188.