

## NOTICE TO PROPOSERS

**ISSUING ENTITY:** CITY OF COVINGTON, KENTUCKY

**PUBLICATION DATE:** Wednesday, June 29, 2016

**DUE DATE AND TIME:** Monday, July 11, 2016 at 3:00PM

**STAFF CONTACTS:**

Lisa Desmarais, Finance Director, [ldesmarais@covingtonky.gov](mailto:ldesmarais@covingtonky.gov)

**LOCATION:** Submit Proposal Binder in sealed package with following statement:

**“COVINGTON FLEET RFP-DO NOT OPEN WITH REGULAR MAIL”**

City of Covington, Kentucky  
1<sup>st</sup> Floor, Finance Window  
20 W. Pike Street  
Covington, Kentucky 41011

**REVIEW:** Pursuant to KRS 45A.370, the evaluation of proposals and making any awards shall be conducted using competitive negotiation. Any final award shall be based upon the criteria set forth in Section 1.4 below. The City of Covington finds that selection based upon competitive negotiation is necessary based upon the finding that specifications cannot be made sufficiently specific to permit an award on the basis of the lowest evaluated bid price. Furthermore, written or oral discussions will not be incorporated into this process based upon the time sensitive nature of the bid process and product to be delivered.

## SCHEDULE

<b>EVENT</b>	<b>DATE</b>
RFP Issued	June 29, 2016
Deadline for Clarifying Questions	July 8, 2016
Deadline to submit Proposals	July 11, 2016

**CITY OF COVINGTON, KENTUCKY FLEET  
REQUEST FOR PROPOSALS (“RFP”)  
PART VI VEHICLE FINANCING**

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**CITY OF COVINGTON, KENTUCKY FLEET  
REQUEST FOR PROPOSALS (“RFP”)  
VEHICLE FINANCING**

**Section 1 BACKGROUND**

- 1.1 **Purpose.** The purpose of this RFP is to identify financing for the various vehicles and equipment the City is procuring through a competitive bid process. To this end, the City is seeking financing proposals (“Proposals”) from qualified entities (“Proposers”) with the capacity and experience to provide a comprehensive solution to the City’s financing needs.
- 1.2 **Form of Submission.** All Proposals submitted under this RFP must conform with the format described herein with each attachment submitted in a three-ring binder (“Proposal Binder”) in the order that it first appears below.
- 1.3 **Questions and Answers.** Throughout the proposal process, Proposers may submit clarifying questions related to the RFP to Finance Director, Lisa Desmarais via email at [ldesmarais@covingtonky.gov](mailto:ldesmarais@covingtonky.gov).
- 1.4 **Evaluation of Proposals.** Any final award shall be made to the Proposer whose proposal is determined by the City to provide the best value to the City according to the process and criteria set forth herein. The terms within KRS 45A.490 to KRS 45A.494 are hereby incorporated as if state in full and the City shall apply the reciprocal preference for resident Proposers to the evaluation of proposals where applicable.

<b>Criteria</b>	<b>Weight</b>
Total Cost to City	60%
Comprehensive Solution	30%
Proposal Materials	10%

- 1.5 **Selection Committee.** The City will establish a Selection Committee to review and evaluate all proposals submitted in response to the RFP. The Selection Committee will be comprised of representatives from various City Departments so as to provide a range of perspectives to contribute to assessing the Best Value according to the criteria set forth above. Pursuant to KRS 45A.370(3)(b), due to the time sensitive nature of delivery, discussions with Proposers will not be conducted and any Final Award will be based upon the evaluation of the written materials submitted by each proposer.
- 1.6 **Negotiation.** After making an Award, the City reserves the right to negotiate fair and reasonable terms and conditions based on the information provided in the Prevailing Proposer’s Proposal. If after negotiation, the parties fail to reach a Final Agreement, the City reserves the right to proceed to the next highest evaluated proposal.
- 1.7 **Items to be Negotiated.** Terms and conditions that may be negotiated at the sole discretion of the City include but are not limited to issues related to invoicing, additional fees, additional services, depreciation rates, if any, and insurance and maintenance requirements.
- 1.8 **Non-Collusion Affidavit.** Each Proposer must execute and include a copy of the Non-Collusion Affidavit with its Proposal.

**Section 2 VEHICLE AND EQUIPMENT FINANCING ATTACHMENTS**

Each Proposer shall submit six (6) proposal binders with the following items submitted in the order outlined below:

- 2.1 **Letter of Intent.** Each Proposer shall in not more than one (1) page, express its intent to submit a bid to provide the Light Duty vehicles outlined in the attached Specifications. The Letter of Intent shall be signed by an authorized representative of the Proposer.
- 2.2 **Master Bid Worksheet.** Each Proposer shall produce a financing proposal based upon the Finance Schedules provided below. The City reserves the right to finance any combination of vehicles for any combination of financing terms provided within the finance schedules.
- 2.3 **Supplemental Finance Documentation.** In addition to providing the data requested on the **MASTER BID WORKSHEET**, Proposers may also include additional documentation, including financing schedules to supplement their Proposal.
- 2.4 **Master Lease Terms and Conditions Worksheet.** The Master Lease Terms and Conditions Worksheet that the City seeks to execute are outlined within Section 4 below. Each Proposer must review the Covington Master Lease Parameters and make any exceptions on the form provided. The Master Lease Parameter Worksheet must be signed by an Authorized Representative of the Proposer and included in the Proposal Binder.
- 2.5 **Finance Product Description.** Proposers must include a description of their financing product. The description should include the (i) basis for any fees and charges, (ii) the determination of interest rates; (iii) whether interest rates are variable and under what circumstances rates will adjust; (iv) penalties, including pre-payment; and (v) other relevant information pertaining to the proposer’s financing product.
- 2.6 **Statement of Project Understanding.** Each Proposer must provide a narrative of its understanding of the Project and the key issues involved in providing fleet financing for the aspects of the City’s Fleet for which the Proposer is submitting a proposal.
- 2.7 **Additional Services.** Proposer may include a description of all additional services not otherwise contemplated under the scope of this Agreement but which complement the nature of this RFP. Such additional services may include car rental services, insurance programs, reporting services, etc...
- 2.8 **Proposer’s Legal Documents.** Proposers must include all Legal Documents that the City will be required to execute in conjunction with any Agreement entered into pursuant to a final award and under this RFP. These documents may include master lease agreements, vehicle schedules, financing agreements, general terms and conditions, or any other similar documents or addenda.
- 2.9 **Proposer’s Statements and Invoices.** For all Vehicles that Proposer proposes to provide finance, Proposer must include samples of actual statements that would be utilized to invoice the City. A narrative description of all line items not exceeding three (3) pages must be included with the sample statements.
- 2.10 **Proposer Checklist.** Each Proposer shall complete the Proposer Checklist that is attached to this packet to confirm that it has supplied the requested materials, or, where applicable, that is has not supplied that requested materials.

### **Section 3 MASTER LEASE PARAMETERS**

The final agreement between the City and any prevailing proposer shall be in the form of a master lease, or similar, agreement, (the “Master Lease”) and incorporate the following assumptions and terms. Proposers may take exception to any assumption or term outlined below on the **MASTER LEASE PARAMETER EXCEPTION WORKSHEET**, which is attached below.

- 3.1 **Governmental Leasing Act.** The Master Lease Agreement will be executed pursuant to KRS 65.940, *et seq.*, (the “Act”) and the City shall fulfill all pre-requisites for issuing financing pursuant to the Act, including the creation of a sinking fund.

- 3.2 **Project Schedules.** Any vehicles financed through the Master Lease Agreement shall be attached as project schedules (the "Project Schedules"). Each Project Schedule shall provide substantially all of the following terms and conditions:
- a. The vehicles and equipment financed under the schedule;
  - b. The total amount financed;
  - c. The term of the financing;
  - d. The interest rate associated with the schedule; and
  - e. The fees and charges associated with the vehicle
- 3.3 **Bank Qualification.** Pursuant to Section 265(b)(3) of the Internal Revenue Code, the City will be bank qualified for calendar year 2016 and calendar year 2017. Further the Master Lease Agreement and each Project Addendum shall be a general obligation of the City and pledge the City's full faith and credit.
- 3.4 **Financing Capacity.** Subject to final approvals prior to award, in the calendar years provided below, the City intends to execute financing to acquire vehicles for the amounts provided.
- a. Calendar Year 2016-an amount not to exceed \$600,000.00
  - b. Calendar Year 2017-an amount not to exceed \$5,000,000.00
- 3.5 **Right to Select Vehicles.** The City shall have the right, in its sole discretion, to select vehicles and equipment listed within the Master Finance Schedule prior to entering into any project schedule. The aggregate value of these vehicles and equipment may be less than the amounts provided in Section 3.4 above.
- 3.6 **Authorized Representatives.** The Final Master Lease shall include a provision stating that only an Authorized Representative from the City shall have authority to execute a document for the acquisition of a vehicle or extension of a lease under any Financing Program. For the purposes of the Final Agreement, Authorized Representative shall mean the City Manager and Mayor of Covington, Kentucky, acting pursuant to an Order/Resolution of the Covington Board of Commissioners. Any vehicle acquired or lease extended through any other representative or employee shall be deemed an ultra vires transaction create no obligation on the part of the City.
- 3.7 **Self-Insurance.** The City is a self-insured entity and to this end any Legal Documents must account for this framework and permit the City to address all disputes, claims, or suits through the Office of the City Solicitor
- 3.8 **Vehicle Repair.** The City shall be solely responsible for conducting all repairs to vehicles that are less than a Total Loss.
- 3.9 **Registration, License Plates.** Unless otherwise, provided the City shall assume all responsibility for vehicle registration fees and the procurement of license plates and other regulatory requirements.
- 3.10 **Title.** The title to all vehicles shall remain in the City's name from acceptance of the vehicle and equipment until the completion of the financing term.
- 3.11 **Equipment.** The Lease or Purchase Agreement shall provide that any Equipment acquired by the City from independent sources shall be the sole property of the City and that at the expiration or sooner termination of any lease term, the City shall retain ownership and possession of all Equipment without penalty. Further the Contractor shall not take any security interest or hold any rights in said Equipment.

**MASTER LEASE TERMS AND CONDITIONS WORKSHEET**

**Instructions:** After reviewing the terms and conditions provided in Section 3 above, complete the following worksheet to confirm acceptance of all terms and conditions, or, where, applicable indicate rejection and propose substitute terms. Substitute or alternate terms may also be provided on an addendum.

<b>TERM</b>	<b>ACCEPT</b>	<b>REJECT</b>	<b>Basis for rejection; Proposed Substitution</b>
3.1			
3.2			
3.3			
3.4			
3.5			
3.6			
3.7			
3.8			
3.9			
3.10			
3.11			

**Acknowledgement of Terms and Conditions**

Proposer acknowledges that it has reviewed the above terms and conditions and has indicated its acceptance or rejection in the spaces provided above.

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_

Title: \_\_\_\_\_

**PROPOSER CHECKLIST**

**INSTRUCTIONS:** Please complete the Proposer Checklist and include in the Proposal Binder to confirm understanding of the submission requirements. Failure to provide requested materials may result in a proposal being deemed non-responsive.

<b><u>ATTACHMENT</u></b>	<b><u>PROVIDED (Y/N)</u></b>	<b><u>EXPLANATION If No</u></b>
LETTER OF INTENT		
MASTER BID WORKSHEET		
SUPPLEMENTAL FINANCE DOCUMENTATION		
MASTER LEASE TERMS AND CONDITIONS WORKSHEET		
FINANCE NARRATIVE		
STATEMENT OF PROJECT UNDERSTANDING		
PROPOSER'S ADDITIONAL SERVICES		
PROPOSER'S LEGAL DOCUMENTS		
PROPOSER'S STATEMENTS AND INVOICES		
PROPOSER CHECKLIST		

**MASTER BID WORKSHEET**

**INSTRUCTIONS:** Please fill all empty cells with the requested data. Any fees or charges, including origination fees, should be based upon total financing amounts of not more than \$600,000.00 for calendar year 2016 and not more than \$5,500,000.00 for calendar year 2017. Any vehicles that Proposer will not finance should be indicated as "N" within the Finance Column. Proposers may provide an explanation of the basis for their Proposal within the **FINANCE NARRATIVE**. Such explanation may include any monetary thresholds at which rates may be adjusted and the term for which any quoted rates will be available.

Sched.	Term	Type	Finance (Y/N)	Unit Cost	Equip. and installation Cost per unit	Total Cost	Fees/Charges	Interest Rate	Monthly Debt Service	Tot. Financed Cost End of Term
'16	60 mo.	(18) Ford Fusion		\$18,275.60	\$1,798.00	\$361,324.80				
'16	60 mo.	(13) Ford Police Interceptor SUV		\$29,650.00	\$8,394.52	\$494,578.80				
'16	60 mo.	(1) Ford Interceptor SUV		\$29,650.00	\$2,270.00	\$31,920.00				
'16	60 mo.	(1) Ford Transit Van		\$33,181.70		\$33,181.70				
'16	60 mo.	(4) Ford F150		\$23,289.70	\$1,650.00	\$99,758.80				
'16	60 mo.	(3) F350 Plow		\$28,579.80	\$6,250.00	\$104,489.40				
'16	60 mo.	(1) F350 FD		\$38,596.00	\$2,270.00	\$40,866.90				
'17	60 mo.	(1) Sign Truck		\$26,112.90	\$22,685.00	\$48,797.90				
'17	60 mo.	(1) Mechanic Truck		\$42,234.90	\$46,970.00	\$89,204.90				
'17	60 mo.	(1) Chipper Truck		\$67,857.00	Included	\$67,857.00				
'17	60 mo.	(1) Bucket Truck		\$102,213.00	Included	\$102,213.00				
'17	60 mo.	(1) 37,000 GVW Chassis		\$75,897.00	N/A	\$75,897.00				
'17	60 mo.	(1) 37,000 GVW DUMP		N/A	\$84,800.00	\$84,800.00				
'17	60 mo.	(1) Ambulance		\$243,884.00	Included	\$243,884.00				
'17	60 mo.	(1) Ambulance		\$243,884.00	Included	\$243,884.00				
'17	180 mo.	(1) Pumper		\$699,236.00	Included	\$699,236.00				
'17	180 mo.	(1) Pumper		\$688,736.00	Included	\$688,736.00				
'17	180 mo.	(1) Tractor Drawn Aerial		\$1,099.976	Included	\$1,099,976				
'17	180 mo.	(1) Heavy Rescue		\$1,119,907	Included	\$1,119,907				



**MASTER BID WORKSHEET CONT...**

**INSTRUCTIONS:** Please provide quotes for the following alternate terms. The City will reserve the right to select the financing options for each vehicle prior to the execution of any Master Lease Agreement.

<b>ALTERNATE TERMS</b>									
Term	Type	Finance (Y/N)	Unit Cost	Equip Cost	Tot Cost	Fees/Charges	Interest Rate	Monthly Debt Service	Tot. Financed Cost End of Term
240 mo.	(1) Pumper		\$699,236.00	Included	\$699,236.00				
240 mo.	(1) Pumper		\$688,736.00	Included	\$688,736.00				
60 mo.	(1) Pumper		\$699,236.00	Included	\$699,236.00				
60 mo.	(1) Pumper		\$688,736.00	Included	\$688,736.00				
240 mo.	(1) Tractor Drawn Aerial		\$1,099,976.00	Included	\$1,099,976.00				
240 mo.	(1) Heavy Rescue		\$1,119,907.00	Included	\$1,119,907.00				

## GENERAL TERMS AND CONDITIONS

By submitting a Proposal, Proposer accepts the following General Terms and Conditions throughout the selection process:

### OFFERS;QUOTES;BIDS

1. **Prices Offered.** Proposers shall provide financing rates and prices upon the **MASTER BID WORKSHEET** attached to this packet. Failure to utilize the City's forms may result in a proposal being deemed non-responsive.
2. **Modification or Withdrawal of Quotation.** A modification of a proposal already received will be considered only if the modification is received prior to the time announced for receipt of proposals. All modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal. Modifications shall be in the same form and manner as the original proposal. Modifications submitted by telephone, telegraph, or facsimile will not be considered. Any proposer may withdraw its bid by giving written notice to the City Clerk at any time **prior** to the time that bids are to be received.
3. **Irrevocable Offer.** Any bid may be withdrawn up until the date and time set above for submission of the Bid. Any quote not so withdrawn shall, upon opening, constitute an irrevocable offer for a minimum period of thirty (30) days to provide to the City the goods services set forth in the proposal.
4. **Errors in Bids.** Proposers or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting Proposals; failure to do so will be at the proposer's own risk. Neither law nor regulations make allowance for errors either of omission or commission on the part of Proposers. In case of error of extension of prices in the bid, the unit price shall govern.

### CITY'S RIGHTS

Under this Request for Proposals the City shall have the following rights:

1. **Right to Substitute or Modify Specifications.** Throughout the Selection Process, the City shall have the right, in its sole discretion, to modify the specifications provided herein.
2. **Right to Modify Selection Process.** The City reserves the right at any time and from time to time, and for its own convenience, in its sole and absolute discretion, to modify or suspend any and all aspects of the Selection Process, including, but not limited to this RFP, and all or any portion of the Selection Process in or subsequent to the RFP; to obtain further information from any successful applicant, to waive any defects as to form or content of the RFP or any other step in the Selection Process; to reject any and all responses submitted; to reissue the RFP; procure the desired services by any other means or not proceed in procuring the services; to negotiate with any, all, or none of the respondents to this RFP as to fees, scope of services, or any other aspect of the RFP or services; to negotiate and modify any and all terms of an agreement; and to accept or reject any applicant for entry into a Final Agreement.
3. **Cancellation.** It is the intention of the City of Covington to purchase material from sources of supply that will give prompt and convenient shipment service. Any failure of the Prevailing Proposer to satisfy the requirements of the City of Covington shall be reason for termination of the Final Award. Any bid may be rejected in whole or in part for good cause when in the best interest of City of Covington.
4. **Budgetary Constraints; Modification.** The City of Covington reserves the right to reduce or increase the quantity, retract any item from the proposal, or upon notification,

terminate entire agreement without any obligations or penalty based upon availability of funds.

5. **The Right to Audit.** The prevailing Proposer agrees to furnish such supporting detail as may be required by the City to support charges or invoices, to make available for audit purposes all records covering charges pertinent to the purchase, and to make appropriate adjustments in the event discrepancies are found. The cost of any audit will be paid by the City. The City shall have the right to audit the proposer's records pertaining to the work/product for a period of three years after final payment.

### INTERPRETATION

1. **"Or Similar" Interpretation** When a particular manufacturer's name or brand is specified along with the words "or similar" bids will be considered on other brands or on the product of other manufacturers. On all such bids the Proposer shall indicate clearly the product (brand and model number) on which the Proposer is bidding, and shall supply a sample or sufficient data in detail to enable an intelligent comparison to be made with the particular brand or manufacturer specified. Failure to submit the above information may be sufficient grounds for rejection of bid. An item shall be considered equal to the item named or described if it is at least equal in quality, durability, strength, design, and other criteria deemed appropriate; it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchase; and it conforms substantially to the detailed requirements for the item in the specifications.

### LEGAL REQUIREMENTS AND REGULATIONS

1. **Tax-Exemption.** The City of Covington is exempt from sales tax and Federal Excise Tax Certificate No. 61-6001804.
2. **Compliance with Legal Requirements.** The Proposer agrees to comply with all applicable statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et seq.*, as amended, and KRS Chapter 338. The Proposer also agrees to notify the City in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site.
3. **Drug Free Workplace.** The Proposer shall conduct business as a Drug Free Workplace. The Proposer shall provide notice to their employees as required under the Drug-Free Workplace Act of 1988. A copy of the Proposer's Drug-Free Workplace policy shall be furnished to the Purchaser upon request.
4. **Equal Employment Opportunity Clause.** The City of Covington Kentucky, in accordance with the provision of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Commerce (15 CFR, Part 8) issued pursuant to such Act, hereby notifies all Proposers that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, that minority businesses will be afforded full opportunity to submit Proposals in response to this advertisement and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
5. **Good Standing.** By submitting its Proposal, Proposer affirmatively states that there are no actions, suits or proceedings of any kind pending against Proposer or, to the knowledge of the Proposer, threatened against Proposer before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Proposer to

perform its obligations under any Final Agreement, or which question the legality, validity or enforceability hereof or thereof.

6. **Code of Ethics.** With respect to this RFP, if any Proposer violates or is a party to a violation of the Code of Ethics of the City of Covington Procurement Regulations and/or the Commonwealth of Kentucky statutes, such Proposer may be disqualified from furnishing the goods or services for which the Proposal is submitted and shall be further disqualified from submitting any future Proposal for goods or services for the City of Covington.
7. **Open Records.** All Submissions shall be subject to Kentucky Open Records Act, K.R.S. 61.870, et. seq. Any Proposer that wishes to protect certain materials must mark the pages that it wishes to protect with the words **CONFIDENTIAL TRADE SECRETS** and include an explanation of the reasons that the disclosure of the materials would present an unfair advantage to competitors. Upon receipt of an open records request the City shall make every effort to protect any materials so marked, but makes no representation as to any ability to prevent disclosure as all open records decisions are subject to the final decision of the Kentucky Attorney General.
8. **Legal Requirements.** It shall be the responsibility of each Proposer to assure compliance with an OSHA, EPA and/or Federal, Commonwealth of Kentucky and City of Covington rules, regulations or other requirements, as each may apply.

#### **INDEMNITY;INSURANCE**

1. **Indemnity.** The Prevailing Proposer shall indemnify and save harmless the City of Covington, its employees and elected leaders from and against all claims, suits, actions, damages, or causes of action arising during the terms of the resulting agreement for any personal injury, loss of life, or damage to property sustained by reason of or as a result of the performance of the services or delivery of goods for which the resulting agreement was entered into, or its agents, employees, invitees, and all other persons, and for and against any orders, judgments, or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. Nothing in the award, resulting agreement, contract or Purchase Order shall be deemed to affect the rights, privileges and immunities of the City of Covington as set forth in Kentucky Statutes. The Prevailing Proposer(s) covenant and agree to indemnify and save harmless the City of Covington, its employees and elected leaders and to defend from all cost, expenses, damages, attorney's fees, injury or loss to which the City may be subjected by any person, firm, corporation, or organization by reason of any wrongdoing, misconduct, want, or need of care or skill, negligence or default or breach of contract, guaranty, or warranty, by the successful Proposer(s), his employees, his agents or assigns
2. **Insurance Requirements.** The Prevailing Proposer(s) must meet the following insurance requirements, which include procuring policies of the types and in the amounts provided below:
  - a. **Worker's Compensation.** As applicable, the Prevailing Proposer must carry a worker's compensation policy in an amount that satisfies the statutory limits under Kentucky Law.
  - b. **General Liability Insurance.** As applicable, the Prevailing Proposer must carry general liability insurance in an amount not less than \$1,000,000.00 aggregate coverage and \$500,000.00 per incident; and

- c. **Automobile Insurance.** As applicable, the Prevailing Proposer must carry automobile insurance in the Commonwealth of Kentucky.

#### **GENERAL TERMS AND CONDITIONS**

1. **Acceptance of Terms and Conditions.** By submitting an RFP, the Proposer acknowledges and agrees to be bound by these General Terms and Conditions.
2. **No Waiver:** No failure or delay by the City in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by the City in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of the City hereunder or shall operate as a waiver thereof
3. **Authority to do Business.** Proposer must be a duly organized and authorized to do business under the laws of Kentucky. Proposer must be in good standing and have full legal capacity to provide the services specified under this Contract. The Proposer must have all necessary right and lawful authority to enter into any Final Agreement for the full term.
4. **Claims Against the City** In consideration for the right to respond to this RFP, Proposer, waives any claim, liability or expense whatsoever against the City and its Staff, Commissioners, and agents by reason of any or all of the following: any aspect of this RFP, the Selection Process or any part thereof, any informalities or defects in the Selection Process, the failure to enter into any agreement, any statements, representations, acts or omissions of the City, the exercise of any discretion set forth or concerning any of the foregoing, and any other matters arising out of all or any of the foregoing.
5. **Force Majeure.** Neither party shall be considered in default in the performance of its obligations under any Final Agreement to the extent that performance of its obligations is prevented or delayed by any cause beyond its reasonable control, including, without limitation, acts of God; acts or omissions of governmental authorities or the other party; strikes; lockouts or other industrial disturbances; acts of public enemies; wars; blockades; riots; civil disturbances; epidemics; floods; hurricanes; tornadoes; and any other similar acts, events, or omissions. When determined that *force majeure* results in a delay of the Work, the date of delivery or performance of any other obligations of the Prevailing Proposer shall be extended for a period of equal duration to the time lost by reason of the delay. Prevailing Proposer shall notify the City in writing within ten (10) calendar days after recognition of the occurrence of any event that Prevailing Proposer believes will result in a delay. In the absence of such notification, Prevailing Proposer waives the right to claim that Work was delayed by the occurrence of such event. If, however, Prevailing Proposer's performance of other obligations is delayed, or it is reasonable to anticipate that performance will be delayed, for a continuous period of six months from the scheduled date for performance, City shall have the right, in its discretion, to cancel the Agreement upon payment to Prevailing Proposer for work performed up to the time of cancellation.
6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any dispute arising under this Agreement shall be resolved in a court of competent jurisdiction in Kenton County, Kentucky.

**BIDDER NON-COLLUSION AFFIDAVIT**

AFFIDAVIT OF PRINCIPAL CONTRACTOR

STATE OF \_\_\_\_\_: SS:  
COUNTY OF \_\_\_\_\_:

\_\_\_\_\_ being first duly sworn, deposes and says that he is

\_\_\_\_\_  
(Sole Owner/Partner/President/Secretary/Other Title)

of \_\_\_\_\_, who on \_\_\_\_\_,  
(Name of Bidder) (Date Bid Submitted)

20\_\_, submitted to \_\_\_\_\_

\_\_\_\_\_ a bid as set forth in the attached copy; that all statements of fact in such bid are true; that such bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly, by agreement, communication of conference with anyone attempting to induce action prejudicial to the interests of the public body which is to award the contract, or of any other bidder or anyone else interested in the proposed contract; and further, that prior to the public opening and reading of bids, said bidder,

- (a) did not directly or indirectly, induce or solicit anyone else to submit a false or sham bid;
- (b) did not directly or indirectly, collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham bid, or that anyone should refrain from bidding or withdraw his bid;

- (c) did not, in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the bid price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of his bid price, or that of anyone else;
- (d) did not, directly or indirectly, submit his bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of individuals, except to the awarding authority or to any person or persons who have a partnership of other financial interest with said bidder in his business; and
- (e) did not include in his bid price any fees, dues, charges, or assessments because required to do so by reason of his membership in or affiliation with any association, organization, corporation, partnership, company, individual or group of individuals, or because of any agreement or understanding with anyone that he would do so.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL OF NOTARY HERE)

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_

My commission expires \_\_\_\_\_.

+ + END OF NON-COLLUSION AFFIDAVIT OF BIDDER + +