



CONTRACT

THIS CONTRACT, made and entered into this 9th day of December, 20 ,
by and between:

CITY OF MARGATE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, 5790 Margate Blvd., Margate, Florida, 33063, (hereinafter referred to as CITY); and M & H Automotive, Inc., 1200 W. Copans Road, Pompano Beach, FL 33064, hereinafter referred to as CONTRACTOR.

WITNESSETH:

IN CONSIDERATION of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do mutually agree as follows:

ARTICLE I

THE CONTRACT DOCUMENTS

The Contract Documents consist of all of the following: RFP Package and all attachments, Response from CONTRACTOR, inclusive of all attachments, parts and pricing schedules and discounts, certificates of insurance and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the Contract.

ARTICLE 2

SCOPE OF THE WORK

CONTRACTOR shall furnish all of the labor, materials, equipment, transportation, supplies, and services necessary to perform all of the work required by the Contract Documents for:

RFP #2016-002

**SUPPLY AND DELIVER AFTERMARKET VEHICLE PARTS & ACCESSORIES –
VEHICLE, LIGHT - HEAVY DUTY TRUCKS AND OFF ROAD VEHICLES TO THE
CITY OF MARGATE PUBLIC WORKS DEPARTMENT.**

ARTICLE 3

CONTRACT TIME

The work to be performed under this Contract shall be commenced upon the date of Contract Commencement specified in the Notice of Award. The initial term of the contract shall be for a period of three years and shall automatically renew for two additional one year extensions, providing all terms and conditions remain the same.

ARTICLE 4

CONTRACT SUM

The CITY shall issue a "Blanket Purchase Order" to CONTRACTOR and order on an "as-needed" basis. There is no firm yearly contract sum.

ARTICLE 5

PAYMENT

1. Payments shall be processed by the CITY upon receipt of a properly executed original invoice and approval by the using department. This payment shall be full compensation for all costs associated with completion of all the work in full conformity with the requirements as stated or shown, or both in the Contract Documents.

2. CITY may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
 - a. Defective work or parts not remedied or replaced.
 - b. Claims filed or unreasonable evidence indicating the probable filing of claims by other parties against CONTRACTOR.
 - c. Failure of CONTRACTOR to make payment to suppliers for materials or labor which directly impact this contract.
 - d. Damage to the CITY or its property not remedied.
 - e. Reasonable evidence that CONTRACTOR cannot complete the work as outlined in the Contract documents.
 - f. Persistent failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or a consent of surety satisfactory to the CITY, which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 6

SPECIAL CONDITIONS

1. CONTRACTOR shall comply with the requirements of the RFP specifications as set forth in the attached RFP packet and all accompanying backup.
2. CONTRACTOR does not assume any responsibility for the current obsolete inventory owned by the CITY. CONTRACTOR agrees to protect the CITY from future obsolete parts on the items sold by CONTRACTOR as long as the CITY is actively doing business under the contract with CONTRACTOR.
3. CONTRACTOR agrees to deliver parts on an hourly basis, if required.
4. The sales manager of CONTRACTOR will meet on site with CITY employees on a regular basis (weekly, if necessary) to resolve any issues or concerns regarding service, parts or compliance with the contract.

5. Percentage of Discount will be given off manufacturers suggested list price – discount pricing varies depending on the manufacturer. CONTRACTOR agrees to keep the CITY up-to-date with current pricing information.
6. All manufacturer price increases/decreases shall be provided to the CITY via CONTRACTOR'S website. However, the percentage of discount for each class shall remain the same.
7. The CITY intends to issue blanket purchase orders on a fiscal year basis and will pay invoices for items received.
8. The CITY reserves the right to cancel the contract without cause upon thirty (30) days written notice; or sooner with cause. Nonperformance or unsatisfactory performance shall be considered grounds for immediate cancellation.
9. Terms used in this Agreement, which are defined in the RFP package, shall have the meanings designated to those Conditions.
10. This is a non-exclusive contract. The CITY may, in its sole discretion, utilize other parties to provide any of the products or services listed in the RFP, or any aspect of the products if the CITY deems it to be in the best interest of the City.

ARTICLE 7

MISCELLANEOUS PROVISIONS

1. **LITIGATION VENUE:** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida.
2. **VALIDITY OF CONTRACT:** Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal, or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.
3. CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all

rights, title, and interest of CONTRACTOR shall thereupon cease and terminate.

4. This agreement, and attachments, represents the entire understanding of the parties and to the matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered hereunder. This agreement may only be modified by amendment in writing signed by each party.
5. **WAIVER OF JURY TRIAL: CITY AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, PROCEEDING, LAWSUIT OR COUNTERCLAIM BASED UPON THE CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**
6. **DISPUTES: NOT WITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, ANY DISPUTE ARISING UNDER THIS CONTRACT, WHICH IS NOT DISPOSED OF BY AGREEMENT, SHALL BE DECIDED BY THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA, WHO SHALL REDUCE HIS DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE CITY MANAGER OF THE CITY OF MARGATE, FLORIDA AND THOSE PERSONS TO WHOM HE DELEGATES AUTHORITY TO DECIDE DISPUTES, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT, CAPRICIOUS, ARBITRARILY, OR GROSSLY ERRONEOUS AS TO NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANCIAL EVIDENCE.**
7. **INDEMNIFICATION:** To the extent permitted by Florida law, CONTRACTOR agrees to indemnify, defend, save, and hold harmless the CITY, their officers and employees, from or on account of all damages, losses, liabilities, including but not limited to reasonable attorney fees, and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the CITY may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.
8. **CONTRACTOR INDEPENDENT:** CONTRACTOR and its employees, volunteers and agents shall be and remain an independent contractor and not agents or employees of CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a

partnership, association, or any other kind of joint undertaking or venture between the parties hereto.

9. **RIGHT TO AUDIT:** CITY reserves the right to audit the records of CONTRACTOR relating in any way to the Work to be performed pursuant to this Agreement at any time during the performance and term of the Contract and for a period of three (3) years after completion and acceptance by CITY. If required by CITY, CONTRACTOR agrees to submit to an audit by an independent certified public accountant selected by CITY.

CONTRACTOR shall allow CITY to inspect, examine, and review the records of CONTRACTOR, at any and all times during normal business hours during the term of the Contract.

10. **MATERIAL ACCEPTANCE:** The materials received under this proposal will remain the property of the bidder until accepted to the satisfaction of the CITY of Margate. In the event the materials supplied to the CITY are found to be defective or do not conform to specifications, the CITY reserves the right to return the product to the bidder at the bidder's expense.
11. **CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the CITY for payment to a Contractor is limited to the availability of funds appropriated in the current fiscal period, and continuation of the Contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

IN WITNESSETH WHEREOF, CITY and CONTRACTOR have signed this Contract in duplicate. One counterpart each has been delivered to CITY and CONTRACTOR. All portions of the Contract Documents have been signed or identified by CITY and CONTRACTOR.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

FOR CITY OF MARGATE



Tommy Ruzzano, Mayor

9th day of December, 2015



Douglas E. Smith, City Manager

9th day of December, 2015

ATTEST:



Joseph J. Kavanagh, City Clerk

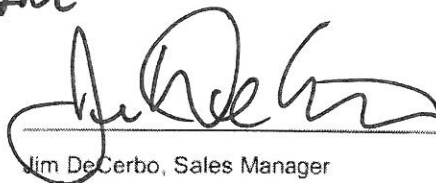
9th day of December, 2015

APPROVED AS TO FORM:

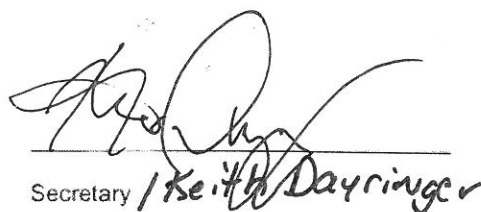


Eugene M. Steinfeld, City Attorney

9th day of December, 2015

FOR CONTRACTORFOR M & H Automotive Inc
Jim DeCerro, Sales Manager3 day of December, 2015

(CORPORATE SEAL)


Secretary / Keith Dayringer3 day of December, 2015

AGREEMENT BETWEEN THE CITY OF MARGATE AND M & H AUTOMOTIVE INC., TO
SUPPLY AND DELIVER AFTERMARKET VEHICLE PARTS AND ACCESSORIES AS
PER THE TERMS AND CONDITIONS OF RFP 2016-002 AND THIS AGREEMENT.