CITY OF CHARLESTON
West Virginia

Council Member – 12th WARD

Joseph Jenkins
839 Gordon Drive
Charleston, West Virginia 25303
304-575-9202
joseph.jenkins@cityofcharleston.org

Finance Committee, Chair
Parking Committee, Chair
Public Safety Committee

AGENDA
FINANCE COMMITTEE MEETING
Monday, October 7, 2019
6:15 PM

I. <u>DISCUSSION:</u>

a. Approval of Previous minutes - September 16, 2019

II. <u>RESOLUTIONS:</u>

a. Resolution No. 247-19 - Authorizing the Mayor or City Manager to sign Change Order No. 1 with McClanahan Construction Co., in the amount of $47,697.00 as part of the Concrete Sidewalk and Accessible Ramp Project.

b. Resolution No. 248-19 - Authorizing the Mayor or City Manager to enter into a contract with ThyssenKrupp Elevator in the amount of $18,000.00 per year for three years, for the annual maintenance of elevators in the Parking garages.

c. Resolution No. 249-19 - Authorizing the Mayor or City Manager to purchase two Pierce Manufacturing Company Arrow XT pumper trucks and associated loose equipment for the Charleston Fire Department.

d. Resolution No. 250-19 - Authorizing approval of Amendment No. 3 in the FY 2019-2020 General Fund Budget.

III. <u>BILLS:</u>

a. Bill No. 7834 - A Bill to amend and reenact Sections of the Municipal Code of the City of Charleston, all relating to updating the tax hearing procedure and appeal process; clarifying language regarding refunds and credits; requiring the use of a neutral hearing examiner; and clarifying appeal times and processes.

IV. <u>The Meeting Time Has Been Amended to 6:15 on October 3, 2019</u>

***Meetings may be recorded and broadcast via internet https://charlestonwv.civicclerk.com**

MINUTES
FINANCE COMMITTEE MEETING
6:20 P.M., SEPTEMBER 16, 2019
A/V CONFERENCE ROOM

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:20p.m., September 16, 2019, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Brent Burton (arrived 6:34)
Mary Beth Hoover
Will Laird
Keeley Steele

I. <u>DISCUSSION:</u>

a. Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the September 3, 2019 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

b. Charleston Convention & Visitors Bureau Annual Update presentation highlights: Alisha Bailey, President and CEO of Charleston Convention and Visitor's Bureau, stated that they work will partners throughout the valley to produce their Inspiration Magazine and Travel Planner. The majority of their advertisements are digital. Last year, their editorial coverage reached 470 million readers. The staff focuses on filling the Convention Center, events and weekend travel, among others. Last year they beat their goal with 32,586 hotel rooms nights booked, with nearly 40 million in economic impact.

II. RESOLUTIONS:

a. Resolution No. 243-19 - Authorizing the Mayor or their designee to submit the CAT Expansion Grant as part of the 2019 Continuum of Care grant to the U. S. Department of Housing and Urban Development and sign all required certifications and agreements including sub-recipient agreements, relating to the CAT Expansion Grant.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or their designee is hereby authorized and directed to submit the CAT Expansion Grant as part of the 2019 Continuum of Care grant to the U. S. Department of Housing and Urban Development and sign all required certifications and agreements including sub-recipient agreements, relating to the CAT Expansion Grant.

City Manager, Jonathan Storage, added that this Centralized Assessment Team grant is a companion resolution to the one previously approved by the Committee during the previous meeting. It is part of the homeless task force group. This expansion program is going to seek $39,542 as a supplement to the original grant, which will be used to help purchase ID cards, rental assistance and transportation (bus tickets, etc.).

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 243-19 approved.

b. Resolution No. 245-19 - Authorizing the City Manager to enter into a lease for approximately 1,600 square feet of space in 601 Morris Street, Suite 200, with West Virginia Child Abuse Network, Inc., for office space for a term of two (2) years and monthly rent of $2,624.

Be it Resolved by the Council of the City of Charleston, West Virginia:

The City Manager is authorized to enter into a lease for approximately 1,600 square feet of space in 601 Morris Street, Suite 200, with West Virginia Child Abuse Network, Inc., for office space for a term of two (2) years and monthly rent of $2,624.

Storage added that CAN is a current renter at that location, and is looking to expand their offices. They will be moving into the office vacated by WVU.

Councilmember Laird abstained from voting as he is employed by a national organization of which WV CAN is a member.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative, with one abstention from Laird, Chairperson Jenkins declared Resolution 245-19 approved.

c. Resolution No. 246-19 - Authorizing the Mayor or City Manager to submit a Fiscal Year 2020 application to the State Development Office to request $400,000 toward road improvements to Barlow Drive under the State's Industrial Access Road Program.

   Be it Resolved by the Council of the City of Charleston, West Virginia:

   The Mayor or City Manager is authorized to submit a Fiscal Year 2020 application to the State Development Office to request $400,000 toward road improvements to Barlow Drive under the State's Industrial Access Road Program.

Storage added that this grant would be supplemental to one for 2019 that is still pending.

Councilmember Hoover asked what the total would be if both grants were awarded. Storage answered that it could be as much as $510,000.

Councilmember Jenkins asked if the full possible amount would be sufficient for the project. Storage answered that, per the original application, the City would be committing to spending $428,000. The grant money would be used toward engineering design work and the installation of retaining walls.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 246-19 approved.

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.

Resolution No. 247-19

Introduced in Council: Adopted by Council:

October 7, 2019

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 247-19 - Authorizing the Mayor or City Manager to sign Change Order No. 1 with McClanahan Construction Co., in the amount of $47,697.00, to replace existing non-complaint ramps and the sidewalk located around Parking Building #1, and installing a new sidewalk and ramps at the Charleston Coliseum Convention Center as part of the Concrete Sidewalk and Accessible Ramp Project. The additional costs will increase the contract price from $453,106.00 to $500,803.00.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to sign Change Order No. 1 with McClanahan Construction Co., in the amount of $47,697.00, to replace existing non-complaint ramps and the sidewalk located around Parking Building #1, and installing a new sidewalk and ramps at the Charleston Coliseum Convention Center as part of the Concrete Sidewalk and Accessible Ramp Project. The additional costs will increase the contract price from $453,106.00 to $500,803.00.

CONCRETE SIDEWALK AND ACCESSIBLE RAMP PROJECT
SPRING 2019

PROJECT NUMBER E2 02/19-123

Change Order No.1
September 25, 2019

This change order will consist of replacing existing non-compliant ramps and sidewalk located around Parking Building #1 and installing new sidewalk and ramps at the Charleston Coliseum and Convention Center.

Parking Building #1

Sidewalk Replacement (Approx.)	**1684.00 s.f. @ $18.50/s.f.**	**$ 31,154.00**
Integral Curb (Approx.)	**211.00 l.f. @ $8.00/l.f.**	**$ 1,688.00**
Detectable Warning Surfaces	**3 ea. @ $200.00**	**$ 600.00**
	Total:	**$ 33,442.00**

Charleston Coliseum and Convention Center

Sidewalk Replacement (Approx.)	**630.00 s.f. @ $18.50/s.f.**	**$ 11,655.00**
Curb and Gutter (Approx.)	**100.00 l.f. @ $14.00/l.f.**	**$ 1,400.00**
Detectable Warning Surfaces	**6 ea. @ $200.00**	**$ 1,200.00**
	Total:	**$ 14,255.00**

Original Contract Price...……………....$453,106.00

Change Order No.1 Price………………$ 47,697.00

New Contract Price …………………...$500,803.00

THE CITY OF CHARLESTON,
a municipal corporation

By_________________________

Its _______Mayor____________

Date _______________________

McCLANAHAN CONSTRUCTION CO., LLC

By______________________________

Its______________________________

Date ____________________________

Resolution No. 248-19

Introduced in Council: Adopted by Council:

October 7, 2019 _____________

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 248-19 - Authorizing the Mayor or City Manager to enter into a contract with ThyssenKrupp Elevator in the amount of $18,000.00 per year, for the annual maintenance of elevators in the Parking garages pursuant to the results of a competitive bidding process. The price is held firm for each year of the three (3) year term, with no price adjustment during the term agreement, and is to be charged to Account No. 406-571-00-000-2-230 –Contract Services.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to enter into a contract with ThyssenKrupp Elevator in the amount of $18,000.00 per year, for the annual maintenance of elevators in the Parking garages pursuant to the results of a competitive bidding process. The price is held firm for each year of the three (3) year term, with no price adjustment during the term agreement, and is to be charged to Account No. 406-571-00-000-2-230 –Contract Services.

Elevator Maintenance Agreement - Parking

Bid Opening: September 10, 2019 @ 11:00am

	DC Elevator	**Thyssenkrupp Elevator**
	521 Slack Street, Suite B	901 Morris Street
	Charleston WV, 25302	Charleston WV, 25301
	P: (304) 345-7222	P: (304) 342-0187
	kathy.davis@dcelevator.com	eric.hackney@thyssenkrupp.com
Maintenance Agreement Per Year	$28,000.00	$18,000.00

Resolution No. 249-19

Introduced in Council: Adopted by Council:

October 7, 2019

Introduced by: Referred to:

Joseph Jenkins Finance

Resolution No. 249-19 - Authorizing the Mayor or City Manager to purchase on behalf of the Charleston Fire Department two Pierce Manufacturing Company Arrow XT pumper trucks and associated loose equipment from Finely Fire Equipment Company by using a competitively sourced state-wide contract procured by the West Virginia Purchasing Division and available for use by state municipalities, where the total purchase price will not exceed $1,290,568.00. The purchase will be expensed to the Public Safety Capital Outlay Account, Account No. 001-976-00-706-4-459.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to purchase on behalf of the Charleston Fire Department two Pierce Manufacturing Company Arrow XT pumper trucks and associated loose equipment from Finely Fire Equipment Company by using a competitively sourced state-wide contract procured by the West Virginia Purchasing Division and available for use by state municipalities, where the total purchase price will not exceed $1,290,568.00. The purchase will be expensed to the Public Safety Capital Outlay Account, Account No. 001-976-00-706-4-459.

Department of Administration Purchasing Division 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130	**State of West Virginia** **Master Agreement** **Order Date:** 2019-08-20

CORRECT ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS ORDER SHOULD BE DIRECTED TO THE DEPARTMENT CONTACT.

Order Number:	CMA 0212 0212 FIRETRK20A	**Procurement Folder:**	621203
Document Name:	Statewide Contract: FIRETRK20A	**Reason for Modification:**	
Document Description:	FIRETRK20A: Fire Trucks & Fire Apparatus		
Procurement Type:	Statewide MA (Open End)		
Buyer Name:	Mark A Atkins		
Telephone:	(304) 558-2307		
Email:	mark.a.atkins@wv.gov		
Shipping Method:	Best Way	**Effective Start Date:**	2019-09-01
Free on Board:	FOB Dest, Freight Prepaid	**Effective End Date:**	2021-08-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000182532 PIERCE MANUFACTURING INC 2600 AMERICAN DR APPLETON WI 54914 US **Vendor Contact Phone:** (920) 832-3000 **Extension:** **Discount Percentage:** 0.0000 **Discount Days:** 0	**Requestor Name:** Mark A Atkins **Requestor Phone:** (304) 558-2307 **Requestor Email:** mark.a.atkins@wv.gov

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

Total Order Amount	Open End

AGENCY COPY

MA 08/21/2019

PURCHASING DIVISION AUTHORIZATION	ATTORNEY GENERAL APPROVAL AS TO FORM	ENCUMBRANCE CERTIFICATION
SIGNED BY: **DATE:** 08/21/19 **ELECTRONIC SIGNATURE ON FILE**	**SIGNED BY:** **DATE:** **ELECTRONIC SIGNATURE ON FILE**	**SIGNED BY:** Beverly Toler **DATE:** **ELECTRONIC SIGNATURE ON FILE**

8/30/19

AUG 30 2019

Date Printed: Aug 20, 2019 **Order Number:** FIRETRK20A **Page:** 1 FORM ID : WV_PRC_CMA_001 8/14

Extended Description:

STATEWIDE COOPERATIVE AWARD

CMA FIRETRK20A: FIRE TRUCKS & FIRE APPARATUS

This Statewide open-end contract with Pierce Manufacturing Inc. is to provide Fire Trucks and Fire Apparatus Equipment to all political subdivisions via the attached Participating Addendum Agreement (Master Agreement No. 8200027988) all incorporated herein by reference and made apart hereof.

Effective Date of Contract: 09/01/2019 through 08/31/2021.

****

ORDERING INSTRUCTIONS: A political subdivision may order eligible items at a 7.50% discount from the vendor's retail list price.

Pierce Manufacturing Inc. has specified that all orders and invoices/payments be established though their authorized dealer network system.

Finley Fire Equipment Co. Inc. is the exclusive dealer for sales and service of custom and commercial Fire Trucks and Fire Apparatus for the State of West Virginia

ORDER CONTACT INFORMATION:

FINLEY FIRE EQUIPMENT CO. INC.
(HEADQUARTERS)
5255 OH-60
McConnelsville, OH 43756
http://www.finleyfire.com

Mark Smith, District Sales Manager
(740)-721-5767

Bailey Buchanan, Sales Manager
(740)-962-4328

****

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	46191600	PIERCE		LS	$0.000000
	Service From	**Service To**			

Commodity Line Description: FIRE TRUCKS & FIRE APPARATUS

Extended Description:
A political subdivision may order eligible items at a 7.50% discount from the vendor's retail list price.

PARTICIPATING ADDENDUM
NASPO ValuePoint
Fire Trucks and Fire Apparatus
Administered by the State of Mississippi (hereinafter "Lead State")

MASTER AGREEMENT
Pierce Manufacturing, Inc.
Master Agreement No: 8200027988
(hereinafter "Contractor")

And

State of West Virginia
(hereinafter "Participating State/Entity")

1. Scope: This addendum covers the Fire Trucks and Fire Apparatus led by the State of Mississippi for use by state agencies and other entities located in the State of West Virginia authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state/entity contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State/Entity Modifications or Additions to Master Agreement:
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State/Entity to check one box.

[__] No changes to the terms and conditions of the Master Agreement are required

[X] The following changes are modifying or supplementing the Master Agreement terms and conditions.

A. The terms contained in the **WV-96** attached hereto as **Exhibit A.**

B. **PRIVACY, SECURITY, AND CONFIDENTIALITY**: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in http://www.state.wv.us/admin/purchase/privacy/default.html.

C. **ANTITRUST**: In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West

Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

D. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry. After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

E. **REPORTS:** The Contractor shall provide to the State of West Virginia's primary contact person quarterly utilization reports containing at a minimum the following information pertaining to the State of West Virginia agencies, boards, commissions, and political subdivisions:

a. Ordering Entity;
b. Purchase order number;
c. Description;
d. Quantity;
e. Price.

PARTICIPATING ADDENDUM
NASPO ValuePoint
Fire Trucks and Fire Apparatus
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Master Agreement No: 8200027988
(hereinafter "Contractor")

And

State of West Virginia
(hereinafter "Participating State/Entity")

These reports will be provided in Excel format and sent via email on a quarterly basis as follows:

PERIOD END	REPORT DUE
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

4. Lease Agreements: Leasing of Equipment is not authorized for agencies of the State of West Virginia, but county, municipal, and other local political subdivisions are not prohibited from doing so, provided that the county, municipal, and other local political subdivisions has the authority to do so.

5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	**Kristina Spang**
Address	**2600 American Drive, Appleton, WI 59414**
Telephone	**(920) 832-3000**
Fax	
E-mail	**kspang@piercemfg.com**

Participating Entity

Name	**West Virginia Purchasing Division**
Address	**2019 Washington St., East, Charleston, WV 25305**
Telephone	**304-558-2306**
Fax	**304-558-3970**
E-mail	**w.michael.sheets@wv.gov**

PARTICIPATING ADDENDUM
NASPO ValuePoint
Fire Trucks and Fire Apparatus
Administered by the State of Mississippi (hereinafter "Lead State")

MASTER AGREEMENT
Pierce Manufacturing, Inc.
Master Agreement No: 8200027988
(hereinafter "Contractor")

And

State of West Virginia
(hereinafter "Participating State/Entity")

6. Subcontractors: All contactors, dealers and resellers authorized in the State of West Virginia, as shown on the dedicated website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: West Virginia Purchasing Division	Contractor: PIERCE MANUFACTURING INC
By:	By:
Name: W. Michael Sheets	Name: Michael E. Pack
Title: Purchasing Director	Title: VP Finance
Date: 08/21/19	Date: 8/16/19

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

PARTICIPATING ADDENDUM
NASPO ValuePoint
Fire Trucks and Fire Apparatus
Administered by the State of Mississippi (hereinafter "Lead State")

MASTER AGREEMENT
Pierce Manufacturing, Inc.
Master Agreement No: 8200027988
(hereinafter "Contractor")

And

State of West Virginia
(hereinafter "Participating State/Entity")

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]

WV-96
1/1/2019

STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"): West Virginia Purchasing Division

Vendor: Pierce Manufacturing, Inc.

Contract/Lease Number ("Contract"): CMA 0212 FIRETRK20A

Commodity/Service: Fire Trucks & Fire Apparatus

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

   Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

   Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

   Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

   Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.

13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.

14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.

16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.

17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.

18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

    Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.

20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

    Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: West Virginia Purchasing Division
By: [signature]
Printed Name: W. Michael Sheets
Title: Purchasing Director
Date: 08/23/19

Vendor: Pierce Manufacturing, Inc.
By: [signature]
Printed Name: Michael E. Pack
Title: VP Finance
Date: 8-22-19

State of Mississippi
Department of Finance and Administration
Office of Purchasing, Travel & Fleet Management

Contract #8200027988 with Pierce Manufacturing Inc. for Fire Trucks and Fire Apparatus

The State of Mississippi in conjunction with NASPO ValuePoint

Under the Authority of
State of Mississippi, Section 31-7-1, et seq., Mississippi Code of 1972, Annotated

TABLE OF CONTENTS

Contract 8200027988 with Pierce Manufacturing Inc. for Fire Trucks and Fire Apparatus

1.0 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this contract is the purchase of vendor-provided equipment and services for Fire Trucks and Fire Apparatus. Contracts may be established with one or more vendors for each of these services and may be modified as necessary to add new technology or enhancements to existing equipment/service available from the contract vendor.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The State of Mississippi (SOM) reserves the right to modify this Contract by mutual agreement between the SOM and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The State of Mississippi (acting as the Lead State for the NASPO ValuePoint Cooperative Purchasing Program), acting by and through the Mississippi Department of Finance and Administration, issued a Request for Proposals (RFP) for the purpose of purchasing equipment and services for Fire Trucks and Fire Apparatus in accordance with its authority under 31-7-1, et seq., of Mississippi Code of 1972, as amended.

Pierce Manufacturing Inc., Inc. submitted a timely Response to the SOM's Solicitation (incorporated by reference).

The SOM evaluated all properly submitted Responses to the above-referenced RFP and has identified Pierce Manufacturing Inc. as one of the apparently successful Contractors.

The SOM has determined that entering into a Contract with Pierce Manufacturing Inc. for the attached categories of Fire Trucks and Fire Apparatus will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, SOM awards to Pierce Manufacturing Inc. this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the equipment and services identified herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1.4 ESTIMATED USAGE

Based on past and/or projected future usage, it is estimated that purchases over the initial three (3) year term of the Contract may approximate $45,000,000 for contract products and services. This estimate was provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed by Purchasers (Participating Entities) only on an as needed basis.

The State of Mississippi/NASPO ValuePoint Cooperative Purchasing Organization does not represent or guarantee any minimum level of purchase.

1.5 CONTRACT TERM

The initial term of this contract is for approximately three (3) years from September 1, 2016, or the date of last signature whichever is later, through August 31, 2019 with the option to extend for two (2) additional one (1) year term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the SOM and are subject to written mutual agreement. The total contract term, including the initial term and all subsequent extensions, shall not exceed five (5) years unless an emergency exists and/or special circumstances require a partial term extension. The SOM reserves the right to extend with all or some of the Contractors, solely determined by the SOM.

1.6 PURCHASERS/PARTICIPATING ENTITIES

Participating Entities

Potential Purchasers/Participating Entities include members of the NASPO ValuePoint Cooperative Purchasing Program and other authorized public entities. The NASPO ValuePoint Cooperative Purchasing Program is a cooperative group-contracting consortium for state government departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.) All 50 states, the District of Columbia, US Territories and other public entities may use NASPO ValuePoint contracts subject to the participation rules set forth in section 5, Participants and Scope, of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

In addition to the State of Mississippi, the following Participating Entities have signified their intent to participate in this contract: State of Hawaii, State of Alaska, State of Oklahoma, State of Nevada, State of Washington, and State of Colorado. An estimated anticipated annual spend amount was provided in the Request for Proposals document to assist vendors in preparing their proposals.

However, this Intent to Participate document is not binding. During the term of this Contract, states and public entities may use this contract by executing a Participating Addendum between themselves and the Contractor.

2.0 CONTRACT ADMINISTRATION

2.1 SOM CONTRACT ADMINISTRATOR

The SOM shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The SOM will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

2.2 ADMINISTRATION OF CONTRACT

SOM will maintain Contract information and pricing and make it available on the DFA web site.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the SOM Contract Administrator concerning Contractor's performance under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract;
4. Agree that any violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination; and

5. Be bound by all written communications given to or received from the Contractor's Representative.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

2.5 CONTRACT MANAGEMENT

Upon award of this Contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this Contract to all authorized contract Purchasers/Participating Entities.
3. Ensure that those who endeavor to utilize this Contract are authorized Purchasers/Participating Entities under the terms and conditions of this Contract.
4. At no additional charge, assist Purchasers/Participating Entities in the following manner to make the most cost effective, value based, purchases including, but not limited to:
   a) Visiting the Purchaser/Participating Entities site and providing them with materials/supplies/equipment recommendations.
   b) Providing Purchasers/Participating Entities with a detailed list of contract products and services including current contract pricing.
5. Designate a customer service representative who will be responsible for addressing Purchaser/Participating Entities issues including, but not limited to:
   a) Logging requests for service, ensuring equipment repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
   b) Providing Purchasers/Participating Entities with regular and timely status updates in the event of an order or repair fulfillment delay.
6. Act as the lead and liaison between the Contractor and Purchaser/Participating Entities in resolving warranty claims for Contract items purchased.

2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

2.7 CONTRACT ADMINISTRATION FEE

The Contract(s) will be subject to a NASPO ValuePoint Administration Fee. Bidder(s) will include this fee in its bid pricing and not as a separate line item to Purchasers/Participating Entities. The Contractor(s) will collect the fees and distribute the fees to NASPO ValuePoint as prescribed in section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

The NASPO ValuePoint Administrative fee shall be paid within sixty (60) days after the end of the calendar quarter. It is the Contractor's responsibility to calculate and remit the Administrative Fee since NASPO ValuePoint does not issue an invoice for this fee. Contractor shall indicate the Contract Number 8200027988 and include with the remittance, a quarterly sales report by NASPO ValuePoint contract participant.

The administrative fee shall be paid to:

NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
POST OFFICE BOX 711
LEXINGTON, KY 40588

In addition to the NASPO ValuePoint Administration Fee as stated above, some Participating Entities may also require an administrative fee, and it will be incorporated into the Participating Entity's Participating Addendum As prescribed by section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

2.8 MISSISSIPPI'S STATEWIDE VENDOR PAYMENT REGISTRATION

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment from Purchasers located within the State of Mississippi under this Contract. Purchasers who are Mississippi state agencies require registration to be completed prior to payment.

2.9 SALES & SUBCONTRACTOR REPORTS

The Contractor shall provide a Sales and Subcontractor Report to the DFA Office of Purchasing, Travel and Fleet Management on a quarterly basis in an electronic format. Reports to NASPO ValuePoint are identified in section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

2.10 MISSISSIPPI'S ELECTRONIC BUSINESS SOLUTION (MAGIC)

Contractor shall be registered in the Contractor registration system, MAGIC, http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/ . Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with MAGIC and maintain an accurate Contractor profile in MAGIC.

3.0 PRICING

3.1 PRICE PROTECTION

Contractor warrants that prices of materials, supplies, services, and/or equipment set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same under similar conditions and in like or similar quantities.

3.2 NO ADDITIONAL CHARGES

Unless otherwise specified herein, no additional charges by the Contractor will be allowed including, but not limited to; handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrator's sole discretion, additional charges may be allowed.

3.3 VOLUME/PROMOTIONAL DISCOUNTS

Contract prices are the maximum or ceiling price Contractor can charge. The Contractor may also offer volume and/or promotional price discounts to Purchasers/Participating Entities.

3.4 NEW PRODUCTS/SERVICES

A Contractor may propose a revision to its contract offerings to reflect technical product upgrades or other changed products and/or services appropriate to the scope of the Contract. These proposed new products/services with associated pricing may be provided to the SOM Contract Administrator for approval. Contract Administrator has the sole discretion to accept or reject such product/service offerings and pricing. New or changed products/services proposed by Contractor must meet the requirements established in the original solicitation document or subsequent revisions. If approved by SOM, the new products/services will be added to the Contract by written amendment.

3.5 PRICE ADJUSTMENTS

At least one hundred twenty (120) calendar days before the end of the current term of this Contract and subsequent extension periods, Contractor may propose purchase price rate increases by written notice to the SOM's Contract Administrator. Price adjustments may be taken into consideration by the SOM's Contract Administrator when determining whether to extend this Contract. Price increases will not be considered without supporting documentation sufficient to justify the requested increase. Contractor shall provide a detailed breakdown of their costs upon request.

Contractors shall not make contract extensions contingent on price adjustments.

Documentation must be based on published indices, such as the Producer Price Index and/or the result of increases at the manufacturer's level, incurred after contract commencement date. The grant of any price adjustment will be at the sole discretion of the SOM and, if granted, shall not produce a higher profit margin for the Contractor than that established by the original contract pricing. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by the SOM, and such price adjustment shall be set forth in a written amendment to the contract.

4.0 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the SOM, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The SOM reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 USE OF SUBCONTRACTORS

In accordance with RFP requirements, Contractor agrees to take complete responsibility for all actions of its Subcontractors.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), and anticipated dollar value of each subcontract:

The SOM reserves the right to approve or reject any and all Subcontractors that are identified by the Contractor. Any Subcontractors not listed in the Bidder's Response, who are engaged by the Contractor, must be pre-approved, in writing, by the SOM.

4.3 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the State for any breach in the performance of the Contractor's duties.

4.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established Mississippi State Contracts.

4.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

5.0 DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

Authorized Purchasers/Participating Entities may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies applicable Contract prices to be applied to the order.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible

damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 EQUIPMENT DEMONSTRATION

During the term of the contract the Contractor may be requested by a Purchaser/Participating Entity to provide an on-site demonstration of the equipment and services available through this contract. Such demonstration(s) shall be provided at no additional cost to the Purchaser/Participating Entity at a mutually agreed upon date and location.

5.3 SHIPPING AND RISK OF LOSS

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's specified destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.4 DELIVERY

The Contractor shall provide the following delivery options as specified below to all purchasing entities. The purchasing entity shall be permitted to select the most cost effective delivery options best meeting their needs.

"We Pay Freight" - this option includes, but not limited to, the following; no additional handling fees, other charges shall be permitted. Purchasing entity shall make arrangements to have its designated representatives' pick-up the unit.

FOB Destination, Freight Prepaid and Added to the invoice – the Contractor must ship FOB destination, Freight Prepaid and may add only the freight charges incurred to the invoice. No other charges shall be included in the freight charge.

FOB Destination, Freight Prepaid – the Contractor shall make freight arrangements and deliver to any destination within the United States. Freight shall be included in the price per unit for the final destination.

The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

5.5 SITE SECURITY

While on Purchaser's/Participating Entity's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

5.6 INSPECTION AND REJECTION

The Purchaser's/Participating Entity's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

5.7 TREATMENT OF ASSETS

1. Title to all property furnished by the Purchaser/Participating Entity shall remain with the Purchaser/Participating Entity, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.
4. If any Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

6.0 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's/Participating Entity's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

6.3 PAYMENT, INVOICING AND DISCOUNTS

Payment is the sole responsibility of, and will be made by, the Purchaser/Participating Entity.

Contractor shall provide a properly completed invoice to Purchaser/Participating Entity. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated NASPO ValuePoint Contract Number; the Purchaser's/Participating Entity's contract/purchase order number (as applicable), and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the State has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser/Participating Entity. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser/Participating Entity. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser/Participating Entity and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's/Participating Entity's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.4 TAXES, FEES AND LICENSES

Taxes:
Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. No charge by the Contractor shall be made for federal excise taxes and the Purchaser/Participating Entity agrees to furnish Contractor with an exemption certificate where appropriate.

Fees/Licenses:
After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

6.5 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser/Participating Entity the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1.5%) per month on the amount due, until paid in full.

6.6 AUDITS

The SOM Contract Administrator and/or the Purchaser/Participating Entity reserves the right to audit, or have a designated third party audit, applicable records to ensure that the

Purchaser/Participating Entity has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

7.0 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to SOM, or any of SOM's officers, or to any other authorized agent or official of the State of Mississippi or other Participating Entity, or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response to the RFP or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

7.3 PRODUCT WARRANTY

Warranty(ies): Unless otherwise specified, full parts and labor warranty period shall be for a minimum period of one (1) year after receipt of materials or equipment by the Purchaser. All materials or equipment provided shall be new and unused of the latest model or design and of recent manufacture.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the Purchaser/Participating Entity maximum benefits, the SOM may avail itself of the Contractor's warranty if deemed more beneficial to the Purchaser/Participating Entity.

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

The Contractor warrants for a period of one year(s) from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Participating Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Participating Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

7.5 COST OF REMEDY

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

7.6 TRAINING

Customer training shall be as specified in the RFP.

8.0 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the SOM Contract Administrator.

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of seven (7) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the SOM, personnel duly authorized by the SOM, personnel duly authorized by the Purchaser, the Mississippi State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 PROPRIETARY OR CONFIDENTIAL INFORMATION

The SOM shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the SOM will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the SOM will release the requested information on the date specified.

The SOM's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the SOM retains Contractor's information in the SOM records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

8.4 NON-ENDORSEMENT AND PUBLICITY

Neither the SOM nor the Purchasers/Participating Entities are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the State of Mississippi or Purchaser/Participating Entity in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the SOM and/or the impacted Participating Entity.

9.0 GENERAL PROVISIONS

9.1 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Mississippi, and the venue of any action brought hereunder shall be in the Circuit Court of Hinds County, First Judicial District. Governing law and venue for participating entities outside the State of Mississippi are prescribed in section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

9.2 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

9.3 SURVIVORSHIP

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Contractor's Commitments, Warranties and Representations; Protection of Confidential and Personal Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Proprietary or Confidential Information; Disputes and Remedies; and Limitation of Liability shall survive the termination of this Contract.

9.4 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee.

9.5 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

9.6 INDEMNIFICATION AND HOLD HARMLESS

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate DFA, the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Contractor's and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the State's concurrence, which the State shall not unreasonably withhold.

9.7 NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Master Agreement, any Participating Addendum or any contract or any purchase order issued thereunder, or any act of a Lead State or a Participating Entity, be a waiver by the Participating Entity of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Participating State. This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

9.8 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Mississippi, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.9 INSURANCE

General Requirements:

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Mississippi that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor.

Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

Specific Requirements:

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than $1,000,000.00. The State of Mississippi will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, products/completed operations, personal injury and advertising injury, and contractual liability, and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Mississippi for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	$2,000,000
Products-Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury Aggregate	$1,000,000
Each Occurrence (applies to all of the above)	$1,000,000
Fire Damage Limit (per occurrence)	$ 50,000
Medical Expense Limit (any one person)	$ 5,000

Excess Coverage:

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

Limit Adjustments:

The State reserves the right to increase or decrease limits as appropriate.

9.10 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; and the Americans with Disabilities Act (ADA.

9.11 OSHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless the State of Mississippi and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.12 ANTITRUST

The State maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the State of Mississippi any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract in the State of Mississippi. Antitrust rights assignment in connection with purchases outside the State of Mississippi is prescribed in section 26 of the NASPO ValuePoint Master Agreement Terms and Conditions (attached).

9.13 WAIVER

Failure or delay of the State of Mississippi or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the State of Mississippi's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the State of Mississippi or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the State of Mississippi or Purchaser of any existing or future right and/or remedy available by law.

9.14 APPLICABLE STANDARD TERMS AND CONDITIONS

Appendix B titled: *NASPO ValuePoint Master Agreement Standard Terms and Conditions*, shall supplement the terms and conditions appearing elsewhere within this contract.

10.0 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between the State of Mississippi or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

Unless irreparable harm will result, neither party shall commence litigation against the other before the Dispute Resolution Panel has issued its decision on the matter in dispute.

The State of Mississippi, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the State, the State of Mississippi may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The State of Mississippi and/or Purchaser reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the Purchaser or Participating Entity.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of the State of Mississippi or Purchaser. Further, the Contractor may be subject to those federal requirements specific to the commodity.

10.7 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10.8 FEDERAL DEBARMENT AND SUSPENSION

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11.0 CONTRACT TERMINATION

11.1 MATERIAL BREACH

A Contractor may be terminated for Cause by the State of Mississippi, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or failure to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the State of Mississippi may issue a written cure notice. The Contractor may have a period of time in which to cure. The State of Mississippi is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the State of Mississippi. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affect any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the State of Mississippi may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;
5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
6. Require Contractor to reimburse the State for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the State of Mississippi shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the State of Mississippi and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the State of Mississippi, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the Purchaser prior to the effective date of Contract termination. Neither the State of Mississippi nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the State of Mississippi when it is in the best interest of the State of Mississippi and/or NASPO ValuePoint.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the State of Mississippi and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the State of Mississippi may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.

11.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

It is expressly understood and agreed that the obligation of the State to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the State, the State shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

11.7 TERMINATION FOR CONFLICT OF INTEREST

The State of Mississippi may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated any laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the State of Mississippi and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.8 TERMINATION BY MUTUAL AGREEMENT

The State of Mississippi and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

11.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the State of Mississippi terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the State of Mississippi and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the State of Mississippi and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;

4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State of Mississippi and/or the Purchaser has or may acquire an interest.

12.0 CONTRACT EXECUTION

12.1 PARTIES

This Contract ("Contract") is entered into by and between the State of Mississippi, acting by and through the Department of Finance and Administration, an agency of the State of Mississippi located at 501 North West Street Suite 701-A, Jackson, Mississippi 39201, and Pierce Manufacturing Inc. Fire Trucks, Inc. a corporation licensed to conduct business in the state of Mississippi ("Contractor"), located at 2600 American Drive, Appleton, WI 54912 for the purpose of providing products and services for Fire Trucks and Fire Apparatus.

12.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the State of Mississippi and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The State of Mississippi's Solicitation document **#3120000620** with all attachments and exhibits, and all amendments thereto;
2. Contractor's response to the Solicitation **#3120000620**;
3. A Participating Entity's Participating Addendum ("PA");
4. The terms and conditions contained on Purchaser's Order Documents, if used; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting

materials Contractor made available to Purchaser and used to affect the sale of the Product and /or Service to the Purchaser.

Order of Precedence:

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations.
2. A Participating Entity's Participating Addendum ("PA").
3. Mutually agreed written amendments to this Contract.
4. This Contract Number 8200027988.
5. The Statement of Work or Work Order.
6. The State of Mississippi's Solicitation document with all attachments and exhibits, and all amendments thereto.
7. Contractor's response to the Solicitation.
8. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Mississippi statute or rule of law, it is considered modified to conform to that statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, (postage prepaid), via facsimile or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally transmitted, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:	To State of Mississippi at:
Pierce Manufacturing Inc.	State of Mississippi Department of Finance and Administration Office of Purchasing, Travel and Fleet Management
Attn: Kristina Spang	**Attn:** Contract Administrator
2600 American Drive Appleton, Wisconsin 59414	**Mail:** Street: 501 North West Street Suite 701-A Jackson, MS 39201
Phone: (920) 832-3000	Phone: (601) 359-5171
Fax:	Fax: (601) 576-2740
E-mail: kspang@piercemfg.com	E-mail: billy.beard@dfa.ms.gov

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or State of Mississippi, such party agrees to notify the other party in the most expeditious fashibn possible following receipt of such subpoena or other legal process. Contractor and the State of Mississippi further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the State of Mississippi or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

SIGNATURES

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective September 1, 2016 or the date of last signature whichever is later.

This is a Partial award for: Solicitation # 3120000620

Approved (Lead State)		Approved
State of Mississippi Department of Finance and Administration Office of Purchasing, Travel & Fleet Management 501 North West Street, Suite 701-A Jackson, MS 39201		Pierce Manufacturing Inc. 2600 American Drive Appleton, Wisconsin 54914
Billy Beard /s/ 10-27-16 Signature Date		Michael E. Pack /s/ 10/25/16 Signature Date
Billy Beard, CMPA Print or Type Name		Michael E. Pack Print or Type Name
Title Contract Administrator		Title VP Finance

27

Signature Date
Print or Type Name
Title
10/27/16 Signature Date
Aubrey Leigh Goodwin, CMPA, Esq. Print or Type Name
Title Chief Procurement Officer

APPENDIX A STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Mississippi. Section 2 of the NASPO ValuePoint Master Agreement Terms and Conditions has additional definitions applicable to Orders place under the cooperative program.

Agency	**"Agency"** means any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority.
Authorized Purchaser	**"Authorized Purchaser"** means an individual authorized by a Participating Entity to place orders against this contract.
Award	**"Award"** means the final execution of the contract document.
Business Hours	**"Business Hours"** means 8:00 AM thru 5:00 PM. CST
Close of Business	**"Close of Business"** means 5:00 PM. CST
Trade Secrets and Confidential Commercial or Financial Information	**"Trade Secrets and Confidential Commercial or Financial Information"** means records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction under this chapter until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential
Contract	**"Contract"** means all types of Mississippi agreements, regardless of what they may be called, for the procurement or disposal of commodities, equipment, services, or construction.

Contractor	"**Contractor**" means any person having a contract with a governmental body.
Determination	"**Determination**" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
Evaluation Committee	"**Evaluation Committee**" means a body appointed to perform the evaluation of Offeror's proposals.
Evaluation Committee Report	"**Evaluation Committee Report**" means a report prepared by the State of Mississippi Contract Administrator and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.
Finalist	"**Finalist**" means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
State of Mississippi	"**State of Mississippi**" means the State of Mississippi conducting this cooperative procurement, evaluation, and award.
Mandatory	"**Mandatory**" – the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.
Master Agreement	"**Master Agreement**" means the underlying agreement executed by and between the State of Mississippi,. acting on behalf of NASPO ValuePoint, and the Contractor, as now or hereafter amended.
Minor Technical Irregularities	"**Minor Technical Irregularities**" means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.
Multiple Source Award	"**Multiple Source Award**" means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
NASPO ValuePoint	"**NASPO ValuePoint**" means the cooperative purchasing program of the National Association of State Procurement Officials (NASPO).

Offeror	**"Offeror"** means the company or firm who submits a proposal in response to this Request for Proposal.
Other Supporting Materials	**"Other Supporting Materials"** means materials Offerors include to enhance their proposal.
Participating Entity	**"Participating Entity"** means a state, or other legal Entity, properly authorized to enter into a Participating Addendum.
Price Agreement	**"Price Agreement"** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services, or construction to a procuring agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
Prime Contractor	**"Prime Contractor"** means the entity submitting the response to this RFP
Agency Procurement Officer	**"Agency Procurement Officer"** means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.
Purchasing Agency	**"Purchasing Agency"** means any governmental body other than the Office of Purchasing, Travel and Fleet Management which is authorized by regulations, or by way of delegation from the Chief Procurement Officer, to enter into contracts.
Proposal	**"Proposal"** means the official written response submitted by an Offeror in response to this Request for Proposal.
Request for Proposals or RFP	**"Request for Proposals"** or **"RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.
Responsible Offeror	**"Responsible Offeror"** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

Responsive Offer	**"Responsive Offer"** means an offer that conforms in all material respects to the requirements set forth in the Request for Proposals. Material respects of a Request for Proposals include, but are not limited to price, quality, quantity, or delivery requirements.
Sealed	**"Sealed"** in terms of a non-electronic submission means, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the State of Mississippi Contract Administrator. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the State of Mississippi Contract Administrator in such cases. The sealed proposal will be used for the public file.
Staff	**"Staff"** means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror's company.
Statement of Concurrence	**"Statement of Concurrence"** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. "We concur", "Understands and Complies", "Comply", "Will Comply if Applicable" etc.).
Written	**"Written"** means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

NASPO ValuePoint

Appendix B

NASPO ValuePoint Master Agreement Terms and Conditions

1. MASTER AGREEMENT ORDER OF PRECEDENCE

a. Any Order placed under this Master Agreement shall consist of the documents set forth in section 12.3 of the body of the Contract, with the order of precedence as specified therein.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. DEFINITIONS

Acceptance is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended. Also referred to as "Contract" in the main body of this Master Agreement.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposals is not required to participate through execution of a Participating Addendum.

Product means ány equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase. Also referred to as "Purchaser" in the body of the Master Agreement.

NASPO ValuePoint Program Provisions

3. TERM OF THE MASTER AGREEMENT

a. The initial term of this Master Agreement is for three (3) years. This Master Agreement may be extended beyond the original contract period for two (2) additional one year periods at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. AMENDMENTS

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. PARTICIPANTS AND SCOPE

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. ADMINISTRATIVE FEES

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

7. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at http://www.naspo.org/WNCPO/Calculator.aspx. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in the Attached Template.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

9. NASPO VALUEPOINT EMARKET CENTER

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

10. RIGHT TO PUBLISH

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. PRICE AND RATE GUARANTEE PERIOD

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 180 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

12. INDIVIDUAL CUSTOMERS

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. ORDERING

a.Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

(1) The services or supplies being delivered;
(2) The place and requested time of delivery;
(3) A billing address;
(4) The name, phone number, and address of the Purchasing Entity representative;
(5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
(6) A ceiling amount of the order for services being ordered; and
(7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. SHIPPING AND DELIVERY

a. Where not otherwise specified pursuant to the terms in the body of the Contract, the prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area.

Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

15. LAWS AND REGULATIONS

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. INSPECTION AND ACCEPTANCE

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.

17. PAYMENT

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. WARRANTY

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

19. TITLE OF PRODUCT

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

20. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

General Provisions

21. INSURANCE

a. Insurance requirements for performance in the State of Mississippi are prescribed in section 9.9 of the body of the Contract. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

22. RECORDS ADMINISTRATION AND AUDIT

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of seven (7) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

23. CONFIDENTIALITY, NON-DISCLOSURE, AND INJUNCTIVE RELIEF

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

24. PUBLIC INFORMATION

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

25. ASSIGNMENT/SUBCONTRACTS

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

26. CHANGES IN CONTRACTOR REPRESENTATION

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

27. INDEPENDENT CONTRACTOR

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

28. CANCELLATION

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon

30 days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

29. FORCE MAJEURE

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, strikes, floods, epidemics, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

30. DEFAULTS AND REMEDIES

The rights of termination of the State of Mississippi and any Purchasing Entity ("Purchaser") are set forth in section 11 of the Contract.

Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

31. WAIVER OF BREACH

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

32. DEBARMENT

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

33. INDEMNIFICATION

a. Indemnification of the State of Mississippi is prescribed in section 9.6 of the body of the Contract. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), other Participating Entities and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. Indemnification of the State of Mississippi is prescribed in section 9.6 of the body of the Contract. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), other Participating Entities and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

(a) Provided by the Contractor or the Contractor's subsidiaries or affiliates;

(b) Specified by the Contractor to work with the Product; or

(c) Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

34. NO WAIVER OF SOVEREIGN IMMUNITY

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

35. GOVERNING LAW AND VENUE

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

36. ASSIGNMENT OF ANTITRUST RIGHTS

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

37. CONTRACT PROVISIONS FOR ORDERS UTILIZING FEDERAL FUNDS

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

38. LEASING OR ALTERNATIVE FINANCING METHODS.

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

Contract 8200027988 with Pierce Manufacturing Inc. for Fire Trucks and Fire Apparatus

NASPO ValuePoint

NASPO Cooperative Purchasing Organization, LLC

Cooperative Contract Sales Reporting Data Requirements and Data Format

This is the minimally acceptable reporting requirement for NASPO ValuePoint cooperative contracts. These elements are NOT negotiable. The field size of certain elements may be adjusted, with authorization from NASPO ValuePoint Cooperative Development Team to accommodate differences in the Vendor Contract Number size.

Lead zeros should be avoided if possible. Fields should be right justified. Field with no data should be left blank.

Reports should be submitted in Microsoft Excel 97-13 format or an equivalent approved by the NASPO ValuePoint Cooperative Development Team.

Field Name	COL #	Field Description	Data Type	Field Size
VENDOR NAME	A	Name of Vendor		
VENDOR CONTRACT NUMBER	B	Lead State assigned contract number (using Lead State's numbering protocol)	Alpha Numeric	8
STATE	C	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)	Alpha Numeric	2
CUSTOMER TYPE (SEGMENT)	D	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]	Alpha Numeric	45
BILL TO NAME	E	Customer (agency) Bill to name	Alpha Numeric	60
BILL TO ADDRESS	F	Customer (agency) Bill to address	Alpha Numeric	40
BILL TO CITY	G	Customer (agency) Bill to city	Alpha Numeric	40
BILL TO ZIPCODE	H	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]	Alpha Numeric	9
SHIP TO NAME	I	Customer (agency) Ship to name	Alpha Numeric	60
SHIP TO ADDRESS	J	Customer (agency) Ship to address	Alpha Numeric	40
SHIP TO CITY	K	Customer (agency) Ship to city	Alpha Numeric	40
SHIP TO ZIPCODE	L	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]	Alpha Numeric	9
ORDER NUMBER	M	Vendor assigned order number	Alpha Numeric	20
CUSTOMER PO NUMBER	N	Customer provided Purchase Order Number	Alpha Numeric	20
CUSTOMER NUMBER	O	Vendor assigned account number for the purchasing entity	Alpha Numeric	20
ORDER TYPE	P	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]	Alpha Numeric	35
PO DATE (ORDER DATE)	Q	(mm/dd/ccyy)	Numeric	8
SHIP DATE	R	(mm/dd/ccyy)	Numeric	8
INVOICE DATE	S	(mm/dd/ccyy)	Numeric	8
INVOICE NUMBER	T	Vendor assigned Invoice Number	Alpha Numeric	20
PRODUCT NUMBER	U	Product number of purchased product	Alpha Numeric	55
PRODUCT DESCRIPTION	V	Product description of purchased product	Alpha Numeric	60
UNSPSC	W	Commodity-level code based on UNSPSC code rules	Alpha Numeric	8
LIST PRICE/MSRP/CATALOG PRICE	X	List Price - US Currency ($99999.999) [determined by industrial practice for each contract - uniform for each contract]	Numeric	10
UNIT PRICE	Y	Unit Price - US Currency ($99999.999)	Numeric	10
QUANTITY	Z	Quantity Invoiced (99999.999)	Numeric	11
TOTAL PRICE	AA	Extended Price (unit price multiplied by the quantity invoiced) - US Currency ($9999999999.999)	Numeric	12
NASPO VALUEPOINT ADMIN FEE	AB	Administrative Fee based on Total Price - US Currency ($999999.999)	Numeric	12
VAR/Reseller/Distributor	AC	If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located (may be a code with a cross reference sheet provided)	Alpha Numeric	30
Energy Star Compliant	AD	Yes = 1 No = 2 Energy Star Does not Apply = 0	Numeric	1
EPEAT Compliant	AE	Gold = 1 Silver = 2 Bronze = 3 EPEAT Does not Apply = 0	Numeric	1
Optional	AF		Alpha Numeric	60
Optional		[ADDITIONAL OPTIONAL COLUMNS MAY BE ADDED BASED ON APPROVAL FROM WNCDT]	Alpha Numeric	60

APPENDIX C CONTRACTOR INFORMATION AND PROFILE

1. **Company Name:** Pierce Manufacturing Inc.
   Address: 2600 American Drive
   City: Appleton State: Wisconsin Zip: 59414
   Phone: 920-832-3000 FAX:
   Federal Tax ID No.: 39-0139830
   Company Internet URL Address: www.piercemfg.com

2. **Legal Status of the Bidder:** S Corporation: X

3. **Bidder's Authorized Representative:**
   Name: Kristina Spang
   Phone: 920-832-3000 FAX: E-mail: kspang@piercemfg.com

4. **Orders to be sent to:**
   Company Name: Pierce Manufacturing Inc.
   Address: 2600 American Drive
   City: Appleton State: Wisconsin Zip: 54914
   Phone: 920-832-3000 FAX:
   Internet address for company catalog (if available): n/a

5. **Billing will be from:**
   Company Name: Pierce Manufacturing Inc.
   Address: 2600 American Drive
   City: Appleton State: Wisconsin Zip: 54914
   Phone: 920-832-3000 FAX:

6. **Payment to be sent to:**
   Company Name: Pierce Manufacturing Inc.
   Address: 2600 American Drive
   City: Appleton State: Wisconsin Zip: 54914
   Phone: 920-832-3000 FAX:

7. **Bidder's Company Experience and History:** Upon request, Contractor will provide information about the company's experience and history in providing fire apparatus and services.

Contract 8200027988 with Pierce Manufacturing Inc. for Fire Trucks and Fire Apparatus

8. **Minority/Women Owned Business (MWBE):** No: X

9. **Payment Methods and Term:**
   Payment Terms: Net 45 days.

10. **Purchasing Cooperative Members:** Contractor agrees to sell the goods and services on this contract to political subdivisions and nonprofit corporations: Yes X.

11. **Subcontractors:** Vendor has identified the following subcontractors as participants in the fulfillment of contract requirements and has provided a briefly describe the nature of equipment/services to be performed. (Reference Section 4.2)

12. **Customer References:** Customers may contact the Contractor for a list of references for any category of fire apparatus and service available through this Contract.

APPENDIX D AWARD & DISCOUNT SHEET

Pierce Manufacturing, Inc. has been awarded a contract for the following categories of Fire Trucks with a discount of 7.5% off retail price. This discount also applies to all options available for each category of Fire Truck.

	List Price	% Discount	Final Price
100' (+/- 5 feet) Mid Mounted Aerial Apparatus, 4 Door	$ 850,892.00	7.5%	$ 787,075.00
75' (+/- 5 feet) Rear Mounted Aerial Apparatus, 4 Door	$ 575,667.00	7.5%	$ 532,492.00
100' (+/- 5 feet) Rear Mounted Aerial Apparatus, 4 Door	$ 651,329.00	7.5%	$ 602,480.00
Medium Duty Rescue Apparatus, 2 Door	$ 173,798.00	7.5%	$ 160,763.00
Medium Duty Rescue Apparatus, 4 Door	$ 184,324.00	7.5%	$ 170,499.00
Min. 2000 Gallon Water Tender, 2 Door	$ 187,580.00	7.5%	$ 173,512.00
Wildland Fire Apparatus Type 3, 4 Door	$ 265,659.00	7.5%	$ 245,735.00
Wildland Fire Apparatus Type 6, 2 Door	$ 143,827.00	7.5%	$ 133,040.00
Wildland Fire Apparatus Type 6, 4 Door	$ 144,351.00	7.5%	$ 133,524.00
Commercial Pumper 2 Door	$ 203,186.00	7.5%	$ 187,947.00
Commercial Pumper 4 Door	$ 214,166.00	7.5%	$ 198,104.00

State of Mississippi Department of Finance and Administration Office of Purchasing, Travel & Fleet Management 501 North West Street, Suite 701-A Jackson, MS 39201	CONTRACT AMENDMENT	
	Contract No.:	8200027988
	Amendment No.:	1
	Effective Date:	12/09/2016

AMENDMENT NO. 1
TO
CONTRACT NO. 8200027988
PIERCE MANUFACTURING INC.

This Amendment to Contract No. 8200027988 is effective 12/09/2016. All other terms and conditions remain unchanged.

PURPOSE

THE PURPOSE of this amendment is to capture the following changes:

- Appendix D- **Add the following language to the Award & Discount Sheet:**

  Custom fire trucks may be purchased from this contract at the same discount as provided on this Award & Discount Sheet.

The contract document has been updated.

Any communications regarding this amendment must be addressed to the Prorcurement Coordinator listed below.

Billy Beard
601-359-5171
billy.beard@dfa.ms.gov

STATE OF MISSISSIPPI
Department of Finance and Administration
Office of Purchasing, Travel & Fleet Management
501 N. West Street, Suite 701-A
Jackson, Mississippi 39201

Billy Beard
Contract Administrator

Date 4-10-17

Pierce Manufacturing Inc.
2600 American Drive
Appleton, WI 54914

Title (VP Finance)

Date 12/26/16

State of Mississippi Department of Finance and Administration Office of Purchasing, Travel & Fleet Management 501 North West Street, Suite 701-A Jackson, MS 39201	CONTRACT AMENDMENT	
	Contract No.:	8200027988
	Amendment No.:	2
	Effective Date:	03/16/2018

AMENDMENT NO. 2
TO
CONTRACT NO. 8200027988
PIERCE MANUFACTURING INC.

This Amendment to Contract No. 8200027988 is effective 03/16/2018. All other terms and conditions remain unchanged.

PURPOSE

THE PURPOSE of this amendment is to capture the following changes:

- Appendix E - Added list of Authorized Dealers. Upon written notice from Pierce Manufacturying Inc. future updates to Appendix E will be made without the need for an amendment.

The contract document has been updated.

Any communications regarding this amendment must be addressed to the Prorcurement Coordinator listed below.

Billy Beard
601-359-5171
billy.beard@dfa.ms.gov

STATE OF MISSISSIPPI
Department of Finance and Administration
Office of Purchasing, Travel & Fleet Management
501 N. West Street, Suite 701-A
Jackson, Mississippi 39201

Billy Beard
Contract Administrator

Date 3-16-18

Pierce Manufacturing Inc.
2600 American Drive
Appleton, WI 54914

Title Sr. Sales Operations Manager

Date 3-16-18

State of Mississippi Department of Finance and Administration Office of Purchasing, Travel & Fleet Management 501 North West Street, Suite 701-A Jackson, MS 39201	CONTRACT AMENDMENT	
	Contract No.:	8200027988
	Amendment No.:	3
	Effective Date:	05/01/2018

AMENDMENT NO. 3
TO
CONTRACT NO. 8200027988
PIERCE MANUFACTURING INC.

This Amendment to Contract No. 8200027988 is effective 05/01/2018. All other terms and conditions remain unchanged.

PURPOSE

THE PURPOSE of this amendment is to capture the following changes:

- Appendix D- **Add the following language to the Award & Discount Sheet:**

  Due to the recently imposed tariffs on steel and aluminum, a commodity surcharge will be allowed on all apparatus sold on or after May 1, 2018. Please contact your authorized Pierce Dealer for the applicable surcharge per product.

The contract document has been updated.

Any communications regarding this amendment must be addressed to the Prorcurement Coordinator listed below.

Billy Beard
601-359-5171
billy.beard@dfa.ms.gov

STATE OF MISSISSIPPI
Department of Finance and Administration
Office of Purchasing, Travel & Fleet Management
501 N. West Street, Suite 701-A
Jackson, Mississippi 39201

Billy Beard
Contract Administrator

Date 5-3-18

Pierce Manufacturing Inc.
2600 American Drive
Appleton, WI 54914

Title (VP of Finance)

Date 5/1/18

State of Mississippi Department of Finance and Administration Office of Purchasing, Travel & Fleet Management 501 North West Street, Suite 701-A Jackson, MS 39201	**CONTRACT AMENDMENT**	
	Contract No.:	8200027988
	Amendment No.:	4
	Effective Date:	09/01/2019

AMENDMENT NO. 4
TO
CONTRACT NO. 8200027988
PIERCE MANUFACTURING INC.

This Amendment to Contract No. 8200027988 is effective 09/01/2019. All other terms and conditions remain unchanged.

PURPOSE

THE PURPOSE of this amendment is to capture the following changes:

- Administrave Fee Adjustment- **Change the NASPO ValuePoint Administrative Fee structure from ¼ of one percent to ¼ of one percent with a maximum fee of $2000 on Purchase Orders for one truck. For purchase orders of 2 or more trucks, the maximum fee will be $1500 per truck.**

The contract document has been updated.

Any communications regarding this amendment must be addressed to the Prorcurement Coordinator listed below.

Billy Beard
601-359-5171
billy.beard@dfa.ms.gov

STATE OF MISSISSIPPI
Department of Finance and Administration
Office of Purchasing, Travel & Fleet Management
501 N. West Street, Suite 701-A
Jackson, Mississippi 39201

Ramona Jones
Contract Administrator

Date 8-5-2019

Pierce Manufacturing Inc.
2600 American Drive
Appleton, WI 54914

Title Director, Sales Operations.

Date 8-5-19.

DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF PURCHASING, TRAVEL AND FLEET MANAGEMENT
701 WOOLFOLK BUILDING, SUITE A
501 NORTH WEST STREET
JACKSON, MISSISSIPPI 39201

RENEWAL INFORMATION FORM

Contractor Name: Pierce Manufacturing

Contract No.: 8200027988

Contract Name: Fire Trucks and Fire Apparatus

Please sign one and only one of the statements below and return this form to Ramona Jones at Ramona.Jones@dfa.ms.gov .

Statement No. 1: Pierce Mfg. wishes to renew the above-referenced contract for an additional twenty four (24) months at the same terms and conditions.

Signature — Date: 8-5-2019

Statement No. 2: Pierce Mfg. does not wish to renew the above-referenced contract.

Signature — Date

Renewal Approved:
Ramona Jones
Sr. Contract Analyst

8-5-2019
Date

August 16, 2019

RE: Sole Source

To whom it may concern:

Since 1917, Pierce Manufacturing Inc. ("Pierce") has provided the finest fire apparatus in the industry. The quality of our products and services are our number one priority. To provide you with the personalized level of sales, service, and warranty you deserve, Pierce has established a network of authorized dealers throughout the country.

Finley Fire Equipment Co. Inc. is the exclusive dealer for the sale and service of custom and commercial fire apparatus manufactured by Pierce in the states of Kentucky, Ohio and West Virginia. As the authorized Pierce dealer for the for mentioned states, Finley Fire Equipment is Prime on all contracts for Pierce product. They have an active dealer agreement and a strong partnership with Pierce for over 40 years.

Finley Fire Equipment Co. Inc. is extremely qualified to provide you with the support you have come to expect from Pierce and has service & warranty facilities located in several locations as shown to provide the first-class customer service support the Pierce family has been known for.

Headquarters
5255 OH-60
McConnelsville, OH 43756
Phone (740) 962-4328
http://www.finleyfire.com

Lake County Service Center
1151 East Street
Fairport, OH 44077

Crawford County Service Center
3416 State Route 602
Bucyrus OH 44820

Southern Kentucky Service Center
780 Enterprise Drive
Lexington, KY 40510

Finley Fire Equipment is committed to our customer's satisfaction and being first point of contact for the Pierce product line. There are two points of contact for Sales:

1. District Sales Manager   Mark Smith   740-721-5767
2. Sales Manager   Bailey Buchanan   740-962-4328

Mark Smith formerly worked at the Pierce factory for 25+ years and has brought his expertise to the Finley organization to lead the Sales team in the state of West Virginia. Bailey Buchanan is your inside Sales manager that will be the primary point of contact for any sales utilizing the NASPO ValuePoint contract in conjunction with West Virginia participating addendum.

Please contact Finley Fire Equipment Co. Inc. direct for detailed sales support or visit their website for more information at www.finleyfire.com.

Sincerely,

Kristina Spang
Director, Sales Operations
Pierce Manufacturing Inc.
An Oshkosh Corporation Company * ISO Certified

Resolution No. 250-19

Introduced in Council	Passed by Council
October 7, 2019	
Introduced by Joseph Jenkins	Referred from Finance Committee

Resolution No. 250-19 - Authorizing approval of Amendment No. 3 in the FY 2019-2020 General Fund Budget as indicated in on the attached list of accounts.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That Amendment No. 3 in the FY 2019-2020 General Fund Budget as indicated in on the attached list of accounts is approved.

General Fund FY 2019-2020 Budget Amendment No. 3 - October 7, 2019

Account No.	Department	Account Description	Amount
001 299	Unassigned Fund Balance		(80,000)
001 700 00 000 1 103	Police	Wages & Salaries	72,760
001 700 00 000 1 104	Police	FICA	1,055
001 700 00 001 1 107	Police	Police Pensions - New Plan	6,185

To allocate a portion of the remaining unassigned fund balance to fund a Shift Differential for Patrol Officers on night shift.

001 299	Unassigned Fund Balance		(100,000)
001 381 00 0000	Revenue	Reimbursements	(121,905)
001 381 01 0000	Revenue	Reimbursements - Police Wages	(37,992)
001 381 04 0000	Revenue	Reimbursement - Fire Wages	(40,103)
001 700 00 000 1 103	Police	Wages & Salaries	33,696
001 700 00 000 1 104	Police	FICA	489
001 700 00 001 1 107	Police	Police Pensions - New Plan	2,864
001 700 00 000 1 226	Police	Insurance - WC & UC	943
001 706 00 000 1 103	Fire	Wages & Salaries	35,568
001 706 00 000 1 104	Fire	FICA	516
001 706 00 001 1 107	Fire	Fire Pensions - New Plan	3,023
001 706 00 000 1 226	Fire	Insurance - WC & UC	996
001 409 02 000 1 103	CARE Office	Wages & Salaries	107,000
001 409 02 000 1 104	CARE Office	FICA	8,186
001 409 02 000 1 105	CARE Office	Medical & Life Insurance	27,078
001 409 02 000 1 106	CARE Office	Retirement - PERS	10,700
001 409 02 000 1 111	CARE Office	Dental/Optical Insurance	932
001 409 02 000 1 112	CARE Office	Insurance - Employee Contribution	(4,024)
001 409 02 000 1 226	CARE Office	Insurance - WC & UC	1,938
001 409 02 000 1 211	CARE Office	Telephone	1,200
001 409 02 000 1 212	CARE Office	Printing	2,000
001 409 02 000 1 214	CARE Office	Travel	8,000
001 409 02 000 1 221	CARE Office	Training	5,000
001 409 02 000 1 230	CARE Office	Contracted Services	37,000
001 409 02 000 1 341	CARE Office	Materials & Supplies	16,895

To recognize the revenue from the QRT grant awarded to the City and to establish the separate budget unit for the CARE Office.
The CARE Office includes 2 new positions, CARE Coordinator (Pay Grade 115) and QRT Project Coordinator (Pay Grade 114).

001 368 12 0000	Revenue	Contributions From Others - AARP	(15,000)
001 979 00 900 4 458	Parks & Recreation	Capital Outlay - Major Improvements	15,000

To recognize the contribtuion from AARP for improvements made to the East End Community Park.

Reportable: To Maintain compliance with the budgetary guidelines of the State of West Virginia

City of Charleston
Office of the Mayor

October 2, 2019

Hon. Joseph Jenkins
839 Gordon Drive
Charleston, West Virginia 25303

Dear Chairman Jenkins:

As you know, my Administration is committed to supporting the City's uniformed service personnel. I recently became aware that, due to changes in policy during the former administration, night shift patrol officers within the Charleston Police Department receive two hours less in regularly-scheduled overtime than their day shift counterparts because of how a night shift straddles the beginning and ending of pay periods. This loss of approximately two hours' worth of built-in overtime lowers morale and disincentivizes night shift work.

I am proposing the adoption of the enclosed budget amendment, which would establish a shift differential for night shift patrol officers. The proposal includes a $1.00 per hour increase, resulting in an $86.00 per pay period increase for such officers. The estimated cost of implementing this budgetary change would be approximately $80,000 per year, which includes the costs of associated benefits. This added cost would be offset by other unassigned balances and/or deferred expenditures in the current budget. This ongoing expense would be built into future budgets. The City Manager and Finance Director stand ready to discuss this proposal with you at your convenience.

Thank you for considering this proposal. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Amy Shuler Goodwin

Amy Shuler Goodwin
Mayor of Charleston

P.O. BOX 2749 • CHARLESTON, WV 25330 • (304) 348-8174 OFFICE • (304) 348-8034 FAX

Bill No. 7834

Introduced in Council: **Adopted by Council:**

September 16, 2019 ______________________

Introduced by: **Referred to:**

Joseph Jenkins, Pat Jones, Bobby Reishman, Jeanine Faegre and Brent Burton **Finance**

Bill No. 7834 - A BILL to amend and reenact Sections 110-33, 110-114 and 110-115 of the Municipal Code of the City of Charleston, as amended, all relating to updating the tax hearing procedure and appeal process; clarifying language regarding refunds and credits; requiring the use of a neutral hearing examiner; and clarifying appeal times and processes.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Sections 110-33, 110-114 and 110-115 of the Municipal Code of the City of Charleston, as amended, are hereby amended and reenacted to read as follows:

Sec. 110-33. - Refunds and credits.

(a) Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this article shall file his claim with the city collector, with a copy to the city attorney, within three years after the due date of the return ~~determined by including any written authorized extension of time for filing,~~ in respect of which the tax was imposed ~~or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid~~, and not thereafter. Notwithstanding such period of limitation, the taxpayer may file a claim for refund within ninety days after a final determination by the state tax department of an overpayment in the taxpayers state business and occupation tax liability.

(b) If, on such petition and the proofs filed in support thereof, the city collector shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, ~~he~~ the city collector shall refund the same to the taxpayer. If the city collector shall be in doubt as to whether or not there exists an overpayment, ~~he~~ the city collector ~~may institute against the taxpayer a declaratory judgment proceeding in the circuit court of the county to ascertain whether or not there exists an overpayment of tax, interest or penalty, or any party thereof~~ shall consult with the finance director and city attorney to make a determination. If the city collector is of the opinion that there exists no overpayment of tax, interest or penalty, or any part thereof, ~~he~~ the city collector shall notify the taxpayer.

(c) Taxpayer's failure to abide by express procedures contained in this section precludes taxpayer's claim for refund or credit.

Sec. 110-114. - Hearing procedure; administrative decision.

(a) When a petition for reassessment or refund or credit as provided for in sections ~~10-113 and~~ 110-33, 110-112, or 110-113 is filed within the time prescribed for such filing, the city collector shall assign a time and a place for ~~a~~ an administrative hearing thereon and shall notify the petitioner and the City Attorney of such hearing by written notice at least ~~twenty~~ sixty days in advance thereof. Such hearing shall be held within ninety days from the date of filing the petition, unless continued by written agreement of the parties or in writing by the city collector or hearing examiner designated by the city collector for sufficient cause. With respect to all petitions filed after the effective date of the 2019 amendments to this section, a hearing may not be continued more than one year from the filing of the petition without reasonable cause placed on the record.

(b) The hearing shall be informal and shall be conducted in an impartial manner by ~~the city collector or~~ a hearing examiner designated by the city collector. Any designated hearing examiner shall be a licensed attorney with experience in administrative law or tax law, or with experience as a judge, including the sitting municipal judge, who does not have a conflict of interest with respect to the taxpayer. If the city collector desires to designate the municipal judge as the hearing examiner, the city collector shall confirm that the municipal judge is able to meet the time requirements contained in this section as part of, and without detriment to, the other ongoing duties of the municipal judge and without additional compensation. The burden of proof shall be upon the taxpayer to show that the assessment or denial of a refund or credit is incorrect and contrary to law, in whole or in part. The hearing examiner is not bound by the rules of evidence as applied in civil cases in the circuit courts of this State. The hearing examiner may admit and give probative effect to evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or her affairs. All testimony shall be given under oath. All hearings shall be recorded by means acceptable for use in courts of this State. All parties shall receive notice that the hearing will be recorded and that each is entitled to receive a copy of the recording at cost. A copy of the exhibits made part of the record shall be available to any party upon request and payment of a reasonable fee.

(c) After ~~such~~ the administrative hearing, the ~~city collector shall~~ hearing examiner may request that proposed findings of fact and conclusions of law from the parties be submitted within thirty days and shall, within a reasonable time, give notice in writing of his or her decision. The decision shall be made no later than six months after the administrative hearing unless extraordinary circumstances exist, in which case the Final Order shall disclose such extraordinary circumstances. The Final Order shall include notice of the right to appeal, as stated in section 110-115, and the bonding requirements for such an appeal.

Sec. 110-115. - Appeals to circuit court.

(a) An appeal may be taken by the taxpayer or the City to the Circuit Court of

Kanawha County within thirty 30 days ~~after service of the city collector's~~ of entry of the hearing examiner’s decision.

(b) The appeal shall be taken by the filing of a petition and notice with the Circuit Court of Kanawha County, a copy of which petition and notice shall be ~~serviced upon or accepted by the city collector as an original notice~~ served upon the city collector and the opposing party’s counsel, or directly to the opposing party if not represented by counsel. ~~When the petition and notice is so served it shall, with the return or acceptance thereon, be filed in the office of the clerk of the circuit court and~~ The appeal will be docketed at the circuit court in a similar manner as other ~~cases~~ administrative appeals, with the ~~taxpayer as plaintiff~~ appealing party listed as petitioner and the ~~city collector as defendant~~ other party listed as respondent. The petition for appeal shall state whether the appeal is taken on questions of law or questions of fact, or both, and set forth with particularity the items of the hearing examiner’s decision objected to, together with the reasons for the objections. The filing of the appeal shall not stay the ~~collection of the tax~~ decision of the hearing examiner. The ~~collection of the tax~~ decision of the hearing examiner shall be stayed if the ~~plaintiff~~ taxpayer shall file with ~~such~~ the clerk of the circuit court a bond for the use of the ~~defendant~~ City, with sureties approved by the clerk, the ~~penalty of the~~ bond amount to be not less than the total amount of the tax, interest and penalties (to such date) appealed from, and conditioned that the ~~plaintiff~~ taxpayer shall perform the orders of the court; provided, that the judge of the circuit court may stay the ~~collection of the tax~~ decision of the hearing examiner without the requirement of a bond, upon a proper showing by the taxpayer that the properties of the taxpayer are sufficient to secure performance of the court's orders or that the ends of justice will be served thereby. Upon receipt, the city collector shall forward a complete copy of the record, including the Final Order, transcripts/recording of the hearing, papers, motions, documents, exhibits, evidence and records as were before the hearing examiner or supplemented prior to the decision, to the Circuit Court, the City Attorney, and the taxpayer, in a manner consistent with Rule 4 of the West Virginia Rules of Procedure for Administrative Appeals.

(c) The circuit court shall hear the appeal and determine ~~anew~~ all questions submitted to it on appeal from the determination of the ~~city collector~~ hearing examiner pursuant to West Virginia Code § 29A-5-4. In such appeal a certified copy of the city collector's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon, and a certified copy of the decree shall be filed by the clerk of the court with the hearing examiner and the city collector, who shall then correct the assessment in accordance with such decree. Either party may appeal to the Supreme Court of Appeals as provided in West Virginia Code § 29A-6-1.

(d) Unless an appeal is taken pursuant to this section within thirty 30 days ~~after service~~ of entry of the administrative decision, the ~~city collector's~~ hearing examiner’s decision shall become final and conclusive and not subject to administrative or judicial review. The amount, if any, due the city under such decision shall be due and payable on the day following the date upon which such decision becomes final and any decision requiring the city to make changes shall be promptly addressed by correcting the assessment, issuing a requisition, or establishing a credit for the amount of an overpayment, as the case may be, on the day following the date upon which the decision becomes final.