

KEY LARGO FIRE RESCUE AND EMS DISTRICT

**Contract for Goods:
In Excess of Threshold Two
(Equal to or in Excess of \$35,000.00)**

WITNESSETH:

WHEREAS, the Key Largo Fire Rescue and Emergency Medical Services District (the "District"), has found it to be in the best interests of the District to purchase an Aerial Fire Truck through the Florida Fire Chiefs' Association Bid #11-10-1202, Specification #132500 Gallon Mobile Supply Fire Apparatus. Such bid terms and conditions controlling this purchase and setting forth the minimum requirements of the product.

WHEREAS, Ferrara Fire Apparatus, Inc. ("Contractor") has been included in Bid Award Announcement 11-10-1202 and has the ability to provide the services sought by the District;

WHEREAS, Ferrara Fire Apparatus, Inc. is duly qualified to provide the services sought by the District;

WHEREAS, the District desires to engage Ferrara Fire Apparatus, Inc. to provide such goods and services for the District and Ferrara Fire Apparatus, Inc. desires to provide such services for the District;

NOW, THEREFORE, in consideration of the mutual covenants and benefits hereinafter set forth, the parties herein covenant and agree as follows:

1. REQUEST FOR BIDS AND BID INCORPORATED HEREIN

The terms and specifications of the Request for Bids issued by the Florida Fire Chiefs' Association and the terms of that bid response submitted by Ferrara Fire Apparatus, Inc., specification #13 are herein incorporated by reference as if fully set forth herein, made part of this Contract. Specification #13 is attached hereto as *Exhibits "A"*. In the event of a conflict between the terms of this Contract and any exhibit, the terms of the Sheriffs' Association Bid # 11-10-1202 shall control, unless otherwise agreed in writing as an amendment pursuant to the terms for such as provided herein. However, nothing herein is to prevent the parties from agreeing to specifications that exceed the minimum required in the bid specifications as set forth in *Exhibit "B"*.

2. TERM

The term of this Contract shall be ONE YEAR FROM DATE OF SIGNATURE.

This Contract may be renewed for a period that may not exceed three (3) years or the term set forth above, whichever period is longer. The compensation for the renewal term shall be determined prior to renewal of this contract and is subject to approval by the District. Further, renewal of this contract is contingent upon a determination by the District that the services have been satisfactorily performed, that the services are needed and upon availability of funds. (NOT APPLICABLE).

3. CONTRACTOR'S SERVICES

Contractor agrees to provide the following goods/services:

2012 Freightliner M2-106 with add/delete options as set forth in Quote No: 10557-0003 as set forth in Exhibit "C".

If documentation of the specific goods/services is attached, said documentation is labeled as Exhibits "A, B and C" to this Contract and is incorporated herewith by reference. In the event of a conflict between the terms of this Contract and any exhibit, the terms of the Sheriff's Association Bid# 11-10-1202 the Bid Documents shall control, unless otherwise agreed in writing as an amendment pursuant to the terms for such as provided herein.

4. COMPENSATION

District shall pay Contractor the sum of **\$297,156.00** for services rendered pursuant to this Contract. Payment to be made as follows: **\$224,628.00 within 15 calendar days after receipt of the purchase order.**

Except as provided above, no payment shall be due until the District verifies that all services for which payment has been requested have been fully and satisfactorily performed except as otherwise set forth in this paragraph. The District will make diligent efforts to verify and pay invoices with the Florida Prompt Payment Act, Florida Statute 218.73.

5. PERFORMANCE BOND

Within ten (10) calendar days after submittal of this executed Contract, the Contractor shall execute and furnish to the District a performance bond on the form provided by the District. The penal sum stated in the bond shall be the amount equal to 100% of the Contract Price payable under this Contract.

The Performance Bond shall guarantee the full and faithful execution of the Contract in an amount equal to 100 percent (100%) of the total Contract Price, and include guaranteed repair and maintenance of all defects due to faulty materials and workmanship that appear within one year after completion of the contract. The performance bond shall be conditioned on the Contractor performing the Work in the time and manner prescribed in the Contract and supporting documents.

A. QUALIFICATIONS OF SURETY

- i) Each bond must be executed by a Surety company of recognized standing,

authorized to do business in the State of Florida as Surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. Each Surety shall submit verification from the Florida Department of Insurance Office of the Treasurer stating the surety company's license and certificate of authorization to do business in the State of Florida.

- ii) The Surety Company shall hold a current certificate of authority as acceptable Surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 2, 1978 (31 DFR Section 223.10, Section 223.111). Further, the Surety company shall provide the District with evidence satisfactory to the District, that such excess risk has been protected in an acceptable manner.
- iii) The District will accept a Surety bond from a company with a rating of B+ or better for bonds up to \$2 million, provided, however, that if any Surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the District shall review and either accept or reject the Surety company based on the financial information available to the District. A Surety company that is rejected by the District may be substituted by the Bidder with a Surety company acceptable to the District, only if the bid amount does not increase.
- iv) Bonds executed by an Attorney-in-Fact on behalf of the Surety, shall have affixed thereto a certified and current copy of Power of Attorney, indicating the monetary limit of such power.

B. BONDS REDUCTION AFTER FINAL PAYMENT

Such bonds shall continue in effect for one (1) year after final payment becomes due except as otherwise provided by law or regulation or by the Contract Documents with the final sum of said bonds reduced after final payment to an amount equal to ten percent (10%) of the Contract Price, or an additional bond shall be conditioned that the Contractor shall correct any defective or faulty Work or material which appears within one (1) year after final completion of the Contract, upon notification by the District.

C. NOTIFICATION TO SURETY

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract

Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change, and evidence of increased coverage provided to the District.

D. DUTY TO SUBSTITUTE SURETY

If the surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other applicable laws or regulations, the Contractor shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to the District.

6. COMPLIANCE WITH LAWS AND POLICIES

Contractor agrees to comply with all current Key Largo Fire Rescue and Emergency Medical Services District policies and all applicable local, state and federal laws, including laws pertaining to public records requests. Contractor agrees that the District has the right to unilaterally and immediately cancel this Contract upon refusal by Contractor to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the contract, unless the records are exempt from s.24(a) of Art. I of the State Constitution and s.119.07(1). Should cancellation be necessary under this clause, the District is required only to provide written notice to Contractor, effective upon receipt of notice, which shall be documented.

7. INDEPENDENT CONTRACTOR STATUS

Contractor is, for all purposes arising under this Contract, an independent contractor. Contractor and its officers, agents or employees shall not, under any circumstances, hold themselves out to anyone as being officers, agents or employees of the District, nor any department thereof. No officer, agent or employee of the Contractor or District shall be deemed an officer, agent or employee of the other party. Neither Contractor nor District, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers compensation benefits, injury leave, or other leave benefits.

8. TERMINATION

A. WITHOUT CAUSE

This Contract may be terminated for any reason by either party upon sixty (60) days written notice to the other party at the addresses set forth below. If said Contract should be terminated as provided in this paragraph of the Contract, the District will be relieved of all obligations under said contract and the District will only be required to pay that amount of the contract actually performed to the date of termination with no payment due

for unperformed work or lost profits.

B. TERMINATION FOR BREACH

Either party may terminate this Contract upon breach by the other party of any material provision of this Contract, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

C. IMMEDIATE TERMINATION BY DISTRICT

District may terminate this Contract immediately upon written notice to Contractor (such termination to be effective upon Contractor's/Individual's receipt of such notice) upon occurrence of any of the following events:

- a. the denial, suspension, revocation, termination, restricting, relinquishment or lapse of any license or certification required to be held by the Contractor, or of any Company/Individual staff's professional license or certification in the State of Florida;
- b. conduct by Contractor or any Company/Individual staff which affects the quality of services provided to the District or the performance of duties required hereunder and which would, in the District's sole judgment, be prejudicial to the best interests and welfare of the District;
- c. failure by Contractor to maintain the insurance required by the terms of this Contract.

9. ASSIGNMENT

Neither Consultant nor the Key Largo Fire Rescue and Emergency Medical Services District may assign or transfer any interest in this Contract without the prior written consent of both parties. Should an assignment occur upon mutual written consent, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

10. AMENDMENT

This Contract may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by the Key Largo Fire Rescue and Emergency Medical Services District.

11. INDEMNIFICATION, GOVERNING LAW & VENUE

Contractor shall indemnify and hold harmless the Key Largo Fire Rescue and Emergency

Medical Services District from and against any and all claims, liabilities, damages, and expenses, including, without limitation, reasonable attorneys' fees, incurred by the District in defending or compromising actions brought against it arising out of or related to the acts or omissions of Contractor, its agents, employees or officers in the provision of services or performance of duties by Contractor pursuant to this Contract.

This Contract shall be construed in accordance with the laws of the State of Florida. Any dispute arising hereunder is subject to the laws of Florida, venue in Monroe County, Florida. The prevailing party shall be entitled to reasonable attorney's fees and costs incurred as a result of any action or proceeding under this Contract.

12. REPRESENTATIONS & WARRANTIES

Contractor represents and warrants to the Key Largo Fire Rescue and Emergency Medical Services District, upon execution and throughout the term of this Contract that:

- 1) Contractor is not bound by any Contract or arrangement which would preclude it from entering into, or from fully performing the services required under the Contract;
- 2) None of the Contractor's agents, employees or officers has ever had his or her professional license or certification in the State of Florida, or of any other jurisdiction, denied, suspended, revoked, terminated and/or voluntarily relinquished under threat of disciplinary action, or restricted in any way;
- 3) Contractor has not been convicted of a public entity crime as provided in F.S. §287.133, to wit: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid, proposal, or rely on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.; and
- 4) Contractor and Contractor's agents, employees and officers have, and shall maintain throughout the term of this Contract, all appropriate federal and state licenses and certifications which are required in order for Contractor to perform the functions, assigned to him or her in connection with the provisions of the Contract.

13. INSURANCE

Contractor agrees to secure and maintain at all times during the term of this Contract, at Contractor's expense, insurance coverage, as laid out below, covering Contractor for all acts or omissions which may give rise to liability for services under this Contract. All Contractor staff are to be insured in minimum amounts acceptable to the Key Largo Fire Rescue and Emergency Medical Services District and with a reputable and financially viable insurance carrier, naming the Key Largo Fire Rescue and Emergency Medical Services District as an additional insured. Such insurance shall not be cancelled except upon thirty (30) days written notice to the District. Contractor shall provide the District with a certificate evidencing such insurance coverage within five (5) days after obtaining such coverage. Contractor agrees to notify the District immediately of any material change in any insurance policy required to be maintained by Contractor.

14. BILLING

Bills for fees or compensation under this contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Further, bills for any travel expenses shall be submitted in accordance with s. 112.061 where applicable.

15. THIRD-PARTY BILLING AND PAYMENT

Contractor shall not be entitled to bill nor accept third-party payment without authorization of the District and Contractor agrees that the District shall not be obligated to make any payment that exceeds the rate referred to in the paragraph governing Compensation. The Contractor shall provide service documentation in accordance with professional standards and District criteria as requested.

16. CONTRACT RECORDS RETENTION

Contractor agrees to comply with all state and federal regulations governing contracts with public entities, including but not limited to cooperation with public records requests as provided by law, cooperation with comptrollers and auditors as provided by law, and adherence to Title 34, section 80.36, which requires the retention of all records concerning a public entity contract for three (3) years after the District makes final payment and all other pending matters concerning the contract are closed.

17. ETHICS CLAUSE

Contractor warrants that he/it has not employed, retained or otherwise had act on his/its behalf any former Key Largo Fire Rescue and Emergency Medical Services District officer or employee. For breach or violation of this provision the Key Largo Fire Rescue and Emergency Medical Services District may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, or otherwise recover the full

amount of any fee, commission, percentage, gift, or consideration paid to the former Key Largo Fire Rescue and Emergency Medical Services District officer or employee.

18. CONFLICT OF INTEREST

The following provisions shall apply for conflict of interest. Any violation of these provisions by a District employee may be grounds for dismissal. No contract for goods or services may be made with any business organization in which the Director or a District member has any material financial interest unless it is a single source or clear documentation exists to show that, no other supplier can provide the identical/comparable goods/service, at a lower cost to the District. No District member, officer or employee may directly or indirectly purchase or recommend the purchase of goods or services from any business organization which they or their near relative have a material interest as defined by §112.313, Florida Statutes. No District member, employee or official may receive gifts or any preferential treatment from vendors. Such members, officers, officials or employees shall not be prohibited from participating in any activity or purchasing program that is offered to all District employees or in District surplus sales, provided there is no preferential treatment.

19. DEBARMENT CERTIFICATION

Contractor certifies that neither the firm, nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position is involved in the administration of federal funds.

20. SEVERABILITY

The parties recognize and agree that should any clause(s) herein be held invalid by a Court of competent jurisdiction, the remaining clauses shall not be affected and shall remain of full force and effect.

21. COUNTERPARTS

This Contract may be executed in one or more counterparts, all of which together shall constitute only one Contract.

22. WAIVER

A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure to perform. Any waiver of insurance requirements as provided by this Contract and/or the policies of the District does not relieve the Contractor of the indemnification provisions contained within this Contract.

23. CAPTIONS

The captions contained herein are used solely for convenience and shall not be deemed to

define or limit the provisions of this Contract.

24. ENTIRE CONTRACT

The parties hereto agree that this is the final Contract between the parties and supercedes any and all prior Contracts and/or assurances, be it oral or in writing.

25. NOTICES

All notices required by this Contract, unless otherwise provided herein, by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by Federal Express or Express Mail, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

Key Largo Fire Rescue and Emergency Medical Services District:

Chairman

P.O. Box 371023

Key Largo, FL 33037

With a copy to:

Key Largo Fire Rescue and Emergency Medical Services District Counsel

Vernis & Bowling of the Florida Keys, P.A.

81990 Overseas Hwy, 3rd Floor

Islamorada, FL 33036

Ferrara Fire Apparatus, Inc. ("Contractor"):

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APPROVED AS TO FORM:

LEGAL DEPARTMENT

DATE

IN WITNESS WHEREOF, the parties have executed this Contract on this _____ day of

_____, _____.

SIGNATURE OF DISTRICT CHAIRMAN

DATE

SIGNATURE OF CONTRACTOR/REPRESENTATIVE

DATE

PRINT NAME AND TITLE