

## **CONTRACT PURSUANT TO REQUEST FOR BIDS**

**Requisition #: 29463**

**Request for Bids Title: AUTOMOTIVE REPLACEMENT PARTS**

**Department: PUBLIC WORKS**

**[Bidder must ensure all empty fields in this Contract are properly completed, including the front page if not pre-populated by the County, the Notice provision in Section 8.1, and the Contractor Signature block. Failure to do so may disqualify the Bidder's Bid.]**

This Contract is made by and between Bidder as its name and principal place of business appear on the Bidder's Verified Submission and Affidavit submitted in response to the Request for Bids referenced and named above (hereinafter the "Contractor") and the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented to the date hereof (hereinafter the "County") through and on behalf of the County Department, Agency, Office, or Court referenced and named above.

**WITNESSETH:**

**WHEREAS**, the County issued a Request for Bids with the Requisition Number and Title as specified on the front page of this Contract (hereinafter the "RFB");

**WHEREAS**, the Contractor submitted a Bid (hereinafter the "Bid") in response to RFB;  
and

**WHEREAS**, the County has determined the Bid to be the lowest and best and to award this Contract to Contractor.

**NOW THEREFORE**, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the County and the Contractor hereby agree as follows:

**ARTICLE I**  
**GENERAL TERMS**

**1.1 The Contract**

The following documents shall constitute the entire contract, and shall govern in the following order:

- (a) This Contract;
- (b) The RFB; and
- (c) The Bid.

The terms and conditions in this Contract shall prevail over any inconsistent terms in either the RFB or the Bid. Should any conflict exist between the Bid and the RFB, the RFB shall govern.

**1.2 Invoicing and Payment**

If any payments are due pursuant to this Contract, unless invoicing procedures are otherwise specified in the RFB, the Contractor shall submit invoice(s) to the County address specified in the RFB. Payment shall be made after verification that the goods, services, and other deliverables indicated on the invoice(s) have been satisfactorily provided in the manner specified in the RFB.

While the timing of payment depends on the particular circumstances involved, valid invoices are generally processed and paid by the County within thirty (30) calendar days of receipt.

**1.3 Insurance Requirements (Types and Limits)**

Contractor shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Contract:

**(a) Mandatory Insurance**

The Contractor shall procure, maintain, and pay premiums for the following forms of insurance:

- (i) Worker's Compensation Insurance as required by the State of Ohio. Such insurance requirement may be met by either

purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Contractors with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;  
\$1,000,000 each employee for bodily injury by disease;  
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- (ii) Commercial General Liability Insurance with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;  
\$1,000,000 personal & advertising injury;  
\$2,000,000 general aggregate;  
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- (iii) Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Note: If the services required under this Contract include the repairing, servicing, parking or storing of vehicles, then the following insurance coverage shall also be required:

Garagekeepers Legal Liability Insurance with a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident.

**(b) Additional Insurance as Required by the RFB**

If the RFB so provides, the Contractor shall procure, maintain, and pay premiums for some or all of the following forms of insurance. The RFB shall

specify which additional forms of insurance, if any, the Contractor must obtain.

- (i) Umbrella/Excess Liability Insurance with limits of liability not less than:

\$5,000,000 each occurrence  
\$5,000,000 general aggregate  
\$5,000,000 products/completed operations aggregate

Such insurance shall be written on an occurrence basis and shall sit in excess of the limits and terms set forth in Section 1.3 (a)-(c).

- (ii) All Risk Equipment Insurance covering all risk of physical damage to equipment provided for use by Contractor.

- (iii) Errors & Omissions Liability Insurance providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$5,000,000 per claim;  
\$5,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

- (iv) Pollution Legal Liability Insurance (including Contractors Pollution Liability Insurance, if applicable) with a limit of liability not less than:

\$1,000,000 per claim;  
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis, however, if written on a claims made-basis, the claims-made retroactive date on the policy shall be prior to the commencement of any work related to this Contract.

- (v) Liquor Liability Insurance with a limit of liability not less than:

\$1,000,000 per occurrence;  
\$1,000,000 aggregate.

- (vi) Aviation Liability Insurance covering the use and maintenance of all owned and non-owned aircraft of any type with a limit of liability not less than:  
  
\$10,000,000 per occurrence;  
\$10,000,000 aggregate.
- (vii) Marine Liability Insurance covering the use and maintenance of all owned and non-owned watercraft with a limit of liability not less than:  
  
\$5,000,000 per occurrence;  
\$5,000,000 aggregate.
- (viii) Builders Risk Insurance on an All Risks Property Coverage Form covering damage to buildings or other structures while under construction or renovation including materials and fixtures whether or not yet incorporated into the buildings or other structures.

#### 1.4 **Mandatory Requirements for All Insurance Coverage**

- (a) The insurance policies of the Contractor required under Section 1.3 with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio" as an Additional Insured and shall contain the following provisions:
  - (i) Thirty (30) days prior notice of cancellation or material change;
  - (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.
- (b) The insurance required in Section 1.3 shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- (c) These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Contract or as provided by law.
- (d) The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.
- (e) The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case

basis whenever it is determined to be in the best interest of the County.

- (f) If the RFB specifies the need for higher limits of liability for any applicable insurance provision, the RFB specifications shall govern.
- (g) The Contractor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

#### **1.5 Performance Bond**

- (a) If specified in the RFB, Contractor shall secure this Contract with a performance bond to indemnify the County against damages as may be suffered by failure of Contractor to perform its duties and obligations under this Contract. Contractor shall furnish a surety bond to the County in amount specified in the RFB within 14 days of notice of award.
- (b) The above policy notwithstanding, the County reserves the right to require a performance bond in various amounts or to modify the performance bond requirement whenever it is determined to be in the best interest of the County. The County reserves the right to waive the performance bond requirement for contracts entered into with a contractor certified by the County under the Small Business Enterprise Program.
- (c) For a multi-year contract a bond in force for the first year of the contract will be acceptable, provided that sixty (60) days prior to expiration of the bond the Contractor notifies the County that the bond has been renewed for an additional one-year term. Proof of renewal shall be in the form of a renewal certificate or document submitted by the surety evidencing continuation of the bond. If a bond is not renewed the Contractor shall notify the County sixty (60) days prior to expiration and/or cancellation of the bond. The Contractor shall be responsible to obtain a new bond to be issued to cover the period in accordance with this section. Such bond shall be provided to the County not less than forty-five (45) days prior to expiration and/or cancellation of the original bonds. A bond shall be in effect for each year thereafter for the remainder of the term of this contract.
- (d) Performance bonds must be issued by a surety company, authorized to do business in the State of Ohio with an A.M. Best's rating of A or higher, in the exact legal business name of the Contractor. The County shall reject all bonds issued in any other business names under which the Contractor is doing business. The bond shall be accompanied by a certified power of attorney and a certificate of compliance from the bonding company for the State of Ohio signed by an authorized representative of the contractor.

## 1.6 Subcontracting

### (a) Subcontractors List and Approval

The Contractor shall provide to the County a Subcontractor Participation Schedule, including a listing of all subcontractors and the portion of the project such subcontractors will perform, and shall keep the Schedule up-to-date for the duration of the term of the Contract by sending written notice to the County. Submission of a Contractor Participation Schedule shall not relieve the Contractor from responsibility of full and complete satisfactory and acceptable performance under the Contract.

### (b) Third Party Beneficiary

The County shall be named as an intended third party beneficiary in any Contract between the Contractor and any subcontractor in the course of Contractor's performance of duties under this Contract. The County's third party beneficiary rights shall vest immediately upon the execution of such subcontract.

## 1.7 Indemnification

Contractor hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Contractor, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by Contractor under any terms or provisions of this Contract.

## **ARTICLE II** **COOPERATIVE PURCHASING PROGRAM**

2.1 In accordance with Ohio Revised Code Section 9.48, the County may permit any political subdivision (within Cuyahoga County) to participate in selected contracts into which the County has entered for the purchase of certain equipment, supplies or other articles. The Contractor may receive purchase orders from these political subdivisions to participate in a contract awarded pursuant to the RFB.

- (a) The County shall notify the Contractor of the name(s) of the political subdivision(s) or other governmental entity that has been authorized by the County to participate in the Contract. The responsibilities and obligations of the County shall cease at this point. The Contractor shall then deal directly with the political subdivision or governmental entity that has been

authorized to participate in this contract. All orders placed by a political subdivision shall then be filled in accordance with the terms and conditions of that particular contract.

- (b) Under no circumstances is the Contractor or any municipality, county, or political subdivision authorized to modify the pricing, terms and conditions, or specifications of this Contract.
- (c) All invoices for such purchases shall be sent directly by the Contractor to the political subdivision's or governmental entity's billing address. Invoices for these political subdivisions or governmental entities, which are sent to the County will be returned to the Contractor.
- (d) All purchases made under the Cooperative Purchasing Program are the responsibility of the political subdivision or governmental entity and the Contractor. Under no circumstances shall the County be obligated to pay any political subdivision's financial commitments.
- (e) The political subdivision or governmental entity must agree, to the extent allowed by law, to release and forever discharge Cuyahoga County, and its officials, officers, employees, agents, representatives, departments, agencies, boards, and commissions from all such claims, actions, expenses, or other damages arising out of or relating to its participation in the Cooperative Purchasing Program.

### **ARTICLE III** **EFFECTIVE DATE**

3.1 This Contract shall become binding and go into effect only upon the date (the "Effective Date") that the last of each of the following has occurred:

- (a) The Contractor has properly submitted the required documents specified in the RFB;
- (b) The Contract has been duly awarded, as applicable, by the Cuyahoga County Contracts and Purchasing Board, Board of Control, or Council;
- (c) The Contractor has satisfied all insurance and bonding requirements and timely furnished required documentation, as specified in this Contract and the RFB, to the County;
- (d) The Cuyahoga County Fiscal Officer has certified the availability of the funds necessary for this Contract and encumbered the appropriate amounts in accordance with the County's practices; and



- (e) The Contract has been executed by the County Executive or a duly authorized designee.

#### **ARTICLE IV**

#### **CONTRACT TERM AND TERMINATION**

##### **4.1 Term**

The term of this Contract shall begin on the Effective Date and shall continue, unless cancelled or terminated under the provisions of this Contract, for the term specified in the RFB.

##### **4.2 Termination**

- (a) *For Cause.* If either party breaches any term of this Contract, the non-breaching party reserves the right to immediately suspend performance and supply written notice of an intent to terminate to the breaching party. Unless otherwise specified in the RFB, the breaching party shall have thirty (30) calendar days to cure the breach from the date of its receipt of the notice of breach. If the breaching party successfully cures the breach, the Contract shall not terminate and the non-breaching party must resume performance. If the breaching party fails to cure the breach within thirty calendar days the Contract shall immediately and automatically terminate for cause.
- (b) *For Convenience.*
  - (i) The County shall have the right to terminate this Contract at any time during the base term or any extension with thirty (30) calendar days advance written notice to the Contractor.
  - (ii) If the RFB is silent on termination, Contractor shall have no right of termination other than for cause as specified in Section 4.2(a) herein. If, however, the RFB expressly provides an additional right of termination to Contractor, such termination by the Contractor shall be allowed as specified in the RFB.

#### **ARTICLE V**

#### **COMPLIANCE WITH LAW**

##### **5.1 Compliance with Law in the Course of Performance**

The Parties agree to comply with all Federal, State, County, and municipal laws, ordinances, resolutions, and policies applicable to the work to be done under this Contract.

**5.1 Licenses, Permits, and/or other Clearances**

The Contractor shall obtain all Federal, State, County, and local licenses, permits, and clearances necessary to fulfill its obligations under this Contract.

**ARTICLE VI**  
**STANDARD COUNTY REQUIREMENTS**

**6.1 Applicable County Ordinances**

All contracts with the County, including this Contract, are subject to all applicable laws, ordinances, resolutions, regulations, rules and policies of the County, including but not limited to the Cuyahoga County Ethics Ordinance, the Cuyahoga County Inspector General Ordinance, the Cuyahoga County Contracting and Purchasing Procedures Ordinance, and the Cuyahoga County Debarment Law, Procedures and Review Board Ordinance. Copies of all County ordinances are available on the County Council website at <http://council.cuyahogacounty.us/>.

**6.2 Ethics Requirements**

The Contractor agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by the Contractor. The Contractor shall consult the Cuyahoga County Office of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at: <http://inspectorgeneral.cuyahogacounty.us/>.

**6.3 Debarment**

Notwithstanding any provision herein to the contrary, in the performance of any of Contractor's obligations herein, Contractor shall not use or subcontract any individual or entity (including any entity that is owned or controlled by any individual) which is the subject of a debarment or suspension hearing or has otherwise been debarred or suspended by the County or any other governmental entity from performing work or services for the County. Contractor shall provide to the County, as specified in Section 1.6, a list of all proposed subcontractors, individuals and entities intended to perform any of the services prior to any engagement or entering into any contract or purchase order with respect to any services to be performed under this Contract.

**6.4 Public Records Law**

- (a) This Contract, including the RFB and Bid, shall be considered a public record under the Ohio Public Records Act ORC 149.43, and shall be

available for inspection and copying by the public.

- (b) If the Contractor considers any portion of any record provided, or to be provided, to the County to be a Trade Secret under Ohio law, it shall conspicuously identify each such portion as "CONFIDENTIAL: TRADE SECRET." Any such information identified as a Trade Secret must meet the legal definition under Ohio law. Ohio Revised Code Section 1333.61(D) defines a trade secret as follows:

"information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information or listing of names, address, or telephone numbers, that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."
- (c) If the Contractor considers any portion of any record provided, or to be provided, to the County to be exempt from the Public Records Act under Ohio law, through an exemption other than being a trade secret, it shall conspicuously identify each such portion as "EXEMPT FROM DISCLOSURE:" and shall specifically state the legal reason, including citation to the applicable section under the Ohio Public Records Act, why it is exempt from such disclosure under the Ohio Public Records Act after the colon.
- (d) No bid, proposal, or statement of qualifications in its entirety, nor price information, will be considered Confidential, Proprietary, or Trade Secret.
- (e) The County shall not in any way be liable or responsible for the disclosure of any such record, including those so marked under Section 6.4(b) &(c), if disclosure is required by law or by an order issued by a court of competent jurisdiction.
- (f) In the event the County is required to defend an action challenging a claimed exemption for any aforementioned

information on a Public Records Act request, the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

(g) This section shall survive this Contract.

**6.5 Findings for Recovery**

The Contractor represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

**6.6 Annual Appropriations**

All of the County's obligations under this Contract are contingent upon the County Council's appropriating the funds on an annual basis necessary for the continuation of this Contract in any contract year. In the event the funds necessary for the continuation of this Contract are not appropriated or approved, the County will notify the Contractor of such occurrence in writing. This Contract shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of this Contract and shall not be considered to be a breach or default on the part of the County, and shall not result in the County having liability to the Contractor or any third party for any penalty, liability or any other expense.

**6.7 No Apparent Authority**

The Contractor recognizes and agrees that no public official, officer, director, or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

**6.8 No Indemnification by County**

The Contractor acknowledges that as an Ohio political subdivision, the County does not indemnify any person or entity. Contractor agrees that no provision of this Contract or any other contract or agreement between Contractor and the County may be interpreted to obligate the County to indemnify or defend Contractor or any other party.

**6.9 County Tax Status**

The County shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County, nor shall the County pay any insurance premiums for any coverage of any property not owned by the County. No conditions shall alter this statement. The County is a tax exempt No. 29 political

subdivision of the State of Ohio. Necessary tax exemption blanks will be furnished to the Contractor when the contract becomes effective.

## **ARTICLE VII**

### **EMPLOYMENT PRACTICES**

#### **7.1 Anti-Discrimination**

Contractor agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and a violation of this term shall be deemed a material breach of this Contract.

It shall be the policy of Contractor to provide equal opportunity to all business persons seeking to contract, or otherwise interested in contracting with, Contractor, including various eligible Small Business Enterprises.

#### **7.2 Prevailing Wage**

- (a) This Contract is subject to Ohio Prevailing Wage Laws, Chapter 4115 of the Ohio Revised Code and the Contractor and all of its subcontractors shall comply with all provisions contained therein or as otherwise provided by this Contract in the performance of all work and services to be performed by Contractor herein. By signing this Contract, the Contractor guarantees that the prevailing wage scale to be paid to all laborers and mechanics employed in connection with construction services shall be in accordance with the published schedule of the prevailing hourly wage and fringe benefits ascertained and determined by the Ohio Department of Commerce for the County in which the work is being performed. The failure to pay prevailing wages to all laborers and mechanics employed for construction services shall be considered a material breach of this Contract by the Contractor. The Contractor and all subcontractors shall compensate the employees for construction services at a pay rate not less than the hourly wage and fringe rate ascertained and determined by the Ohio Department of Commerce for the county in which the work is being performed or as may be modified by the Ohio Department of Commerce, Division of Labor and Worker Safety Wage and Hour Bureau, when new prevailing rates are established. Overtime shall be paid at one and one-half times the basic hourly rate and the hourly fringe rate for any hours worked beyond forty hours during a pay week. All subcontractors shall pay all compensation by company check to the worker and fringe benefit program. The wage and fringe rates determined for construction services shall be posted by the Contractor in a prominent and accessible place at the work site where they can be easily read by the

workers or otherwise made available to the workers.

- (b) The Contractor and all subcontractors performing construction services shall submit to the County certified payroll forms or the equivalent, in accordance with Sections 4115.07 and 4115.071(C) of the Ohio Revised Code, with every draw request until the completion of the Contract. Additionally, a copy of the "Apprentice Certification" obtained from the USDOL, Bureau of Apprenticeship and Training, must accompany the first certified payroll submitted, for all apprentices working on construction services under the Contract. Upon request of the County, Contractor shall submit verification of compliance with the provisions of this Section.
- (c) Within ninety (90) days after completion of the construction services, the Contractor and all subcontractors shall submit to the County a final wage affidavit in accordance with Section 4115.07 of the Ohio Revised Code stating that wages have been paid in conformance with the prevailing wages ascertained and determined by the Ohio Department of Commerce for the county in which the work is being performed. Payroll records shall be maintained by the Contractor and all subcontractors in accordance with Section 4115.07 of the Ohio Revised Code. The Contractor and all subcontractors shall make all of its payroll records available for inspection, copying or transcription by any authorized representative of the County.

### **ARTICLE VIII** **NOTICE**

- 8.1 Every notice, demand, consent, request, approval, report, offer, acceptance, certificate, or other communication which may be, or is required to be, given or delivered under or with respect to this Contract shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, and directed to the other party at its address set forth below, or at such other address within the continental United States as any party may hereafter designate by similar notice to the other.

**To County:**  
(Enter Issuing Department/Agency/  
Office/Court Address)

Cuyahoga County

Department of Public Works

1642 Lakeside Avenue

Cleveland, Ohio 44114

With respect to any legal claims or  
disputes, and/or issues of liability, a  
simultaneous copy must be sent to:

The County of Cuyahoga, Ohio  
Attn: Cuyahoga County Director of Law  
Cuyahoga County Department of Law  
1219 Ontario Street, 4<sup>th</sup> Floor

Cleveland, Ohio 44113

**To Contractor:**  
(Enter Contractor Address)

Lakefront Automotive Parts Co  
3141 Superior Ave  
CLEVELAND OHIO 44114  
   
 

**ARTICLE IX**  
**MISCELLANEOUS**

**9.1 Force Majeure Event**

Notwithstanding anything to the contrary set forth herein, if either Party shall be delayed, hindered in, or prevented from, the performance of any covenant or obligation hereunder, as a result of any Force Majeure Event, and, provided that the Party delayed, hindered in, or prevented from performing notifies the other Party both of the commencement and of the expiration of such delay, hindrance or prevention (each notice being required within a reasonable time period no longer than fourteen (14) days of when such Party knew or should have known, using commercially reasonable diligence, of the respective event), then performance of such covenant or obligation shall be excused for the period of such delay, hindrance or prevention and the period of performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance, or prevention. The Parties shall use commercially reasonable efforts to mitigate the adverse effect and duration of the Force Majeure Event and to perform all of their obligations hereunder that are not affected by the Force Majeure Event.

As used in herein, a "Force Majeure Event" shall mean the occurrence of any of the following: acts of God; the confiscation or seizure by a governmental authority; insurrections; wars or war-like action; multi-site or regional strikes; landslides, lightning, earthquakes, fires, hurricanes, storms, floods, or other such severe weather; explosions; epidemics (as declared by the U.S. Center for Disease Control and Prevention); civil disturbance or disobedience; riot, sabotage, terrorism or threats of sabotage or terrorism; change in law that prohibits or materially interferes with development or construction of the Project; or other cause that is not within the reasonable control of the Party claiming the right of delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure Event" shall not include an inability to pay debts or other monetary obligations in a timely manner.

**9.2 Governing Law/Jurisdiction**

This Contract shall be governed by, and shall be construed and enforced in

accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Contractor hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.

**9.3 Entire Contract**

This Contract, in addition to the incorporated documents specified in Section 1.1, constitute the entire Contract between the parties and supersede any and all inconsistent representations, written or oral, between the parties.

**9.4 Contract Interpretation and Construction**

In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract.

**9.5 Authority**

Each signatory hereto certifies that he or she is duly authorized and empowered to sign and deliver this Contract on behalf of all entities named below on whose behalf he or she has so acted.

**9.6 Prohibition on Assignment**

The Contractor may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without prior written consent from the County.

**9.7 Time of Performance**

Time of performance is of the essence of each and every term, provision, and condition contained in this Contract.

**9.8 Successors and Assigns**

All terms, covenants, conditions and provisions of this Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, devisees, executors, administrators, legal representatives, and permitted successors in interest and assigns.

**9.9 Paragraph Headings; Gender and Number**



The headings inserted at the beginning of each paragraph of this Contract are for convenience and reference only and shall not define, limit, describe, or otherwise affect or be used in the construction of any of the terms or provisions hereof. The use of any one gender shall include all others. The plural number shall include the singular, and the singular number the plural, wherever the context so admits.

**9.10 Herein/Including**

The terms "herein," "hereof," "hereunder" or words of similar import shall be deemed to refer to this Contract in its entirety unless otherwise specifically stated. Whenever the word "including," "includes" or any variation thereof is used herein, such term shall be construed as a term of illustration and not a term of limitation. For example, the term "including" shall be deemed to mean "including, without limitation", and the term "includes" shall be deemed to mean "includes, without limitation".

**9.11 Amendment**

No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Contract.

**9.12 Counterparts**

This Contract may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, and all of which shall together constitute one and that same document, and shall be binding on the signatories; and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

In the event that any signature is delivered by facsimile transmission, by email delivery of a ".pdf" format data file, or by uploading of a ".pdf" format data file on the County's website, such signatures shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**9.13 Survival**

Notwithstanding anything to the contrary, any provision of this Contract that, by its terms, survives any termination of this Contract and/or the closing and delivery shall survive and shall be enforceable after any termination of this Contract.

**9.14 Severability**

If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provisions and the remainder of this Contract shall

be and remain valid and binding as though such provision was not included.

9.15 **Non-Exclusivity**

Nothing herein is intended, nor shall be construed, as creating any exclusive arrangement with the Contractor. The County reserves the right to acquire similar, equal, or like goods, services, and/or other deliverables from other entities or sources.

9.16 **Non-Waiver**

The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

9.17 **Performance**

Acceptance of performance is a condition of this Contract. It shall be understood and agreed that an agent for the County shall determine finally the satisfactory quality of the services and/or materials furnished under the Contract. Failure to meet the performance requirements is a reason for termination of the Contract, and the Contractor shall be liable to the County for any excess cost and/or expenses incurred by the County thereunder.

9.18 **Agreement to Remain in Compliance with Certifications, Representations and Warranties as Continuing Commitments/Verification.**

The Contractor shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and it shall immediately notify the County in writing in the event that any of the certifications, representations, or warranties ceases to be true. At its sole discretion, the County reserves the unequivocal right to review and audit the Contractor's continuing certifications, representations, and warranties.

9.19 **Intellectual Property Rights**

The Contractor hereby agrees that there will be no charge to the County for any patent, copyright, or any other intellectual property rights which it controls and which may be involved in the work under this Contract unless such charges have been specified and included in the bid price. The Contractor shall advise the County, in writing, of any process or patent rights which are not held or controlled by the Contractor, but which in the Contractor's opinion may be involved in the work contemplated herein.

9.20 **Transfer of Title**

If the RFB specifies the sale of goods or other property to the County, title shall transfer to the County upon payment of all costs associated with a purchase.

9.21 **Independent Contractor**

The Contractor shall be and remain an independent contractor with respect to all services performed herein and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Contractor also agrees to indemnify and save harmless Cuyahoga County from such contributions, taxes or liability.

9.22 **Payment of Claims**

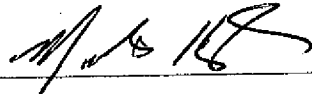
The Contractor shall truly and promptly pay or satisfy the just and equitable claims of all persons who have performed labor or furnished materials or equipment for said Contractor in the execution of this Contract, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon said work.

**ARTICLE X**  
**ELECTRONIC SIGNATURE**

- 10.1 **THE CONTRACTOR AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. THE CONTRACTOR ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.**

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Contract, effective as of the Effective Date.

**THE CONTRACTOR:**

Signature: 

Printed Name: MARTIN HUGHES

Contractor: LAKEFRONT Automotive Parts Co  
(FULL LEGAL NAME AS IT APPEARS IN THE BID)

Title: General Sales manager

Date: 2/7/14

**THE COUNTY:**

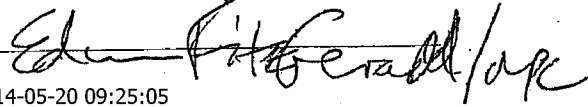
**COUNTY OF CUYAHOGA, OHIO**

The legal form and correctness of this  
Contract has been pre-approved by

Majeed G. Makhoul

**Majeed G. Makhoul, Director of Law**  
Cuyahoga County Department of Law  
1219 Ontario Street, 4<sup>th</sup> Floor  
Cleveland, OH 44113

Edward FitzGerald, County Executive

Signature:   
2014-05-20 09:25:05

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**[Bidder must ensure all empty fields in this Contract are properly completed, including the front page if not pre-populated by the County, the Notice provision in Section 8.1, and the Contractor Signature block. Failure to do so may disqualify the Bidder's Bid.]**