

SUBSTITUTE NO. 1 TO ORDINANCE NO. 17-028

AN ORDINANCE TO AUTHORIZE A FLEET MANAGEMENT AND MAINTENANCE CONTRACT WITH FIRST VEHICLE SERVICES, INC.

**Rev. 1
#4391**

Sponsor:

**Council
Member
Turner**

WHEREAS, pursuant to Section 2-308 and 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City desires to obtain motor vehicle fleet management and maintenance services; and

WHEREAS, the City has issued a request for proposals for such services in accordance with the City Charter; and

WHEREAS, the term of the contract for such services shall be for a period of five (5) years, with three (3) possible renewal periods of one (1) year each, in order to provide for continuity of service and to minimize disruption; and

WHEREAS, after a thorough review of the proposals submitted, it is the recommendation of the Department of Public Works that a Fleet Management and Maintenance Contract (the "Contract"), a copy of which (without exhibits) is attached hereto as Exhibit "A", be entered into with First Vehicle Services, Inc. The exhibits to said contract are available for review in the Department of Public Works; and

WHEREAS, the cost to the City for the Contract shall be approximately as follows:

FY 2018 - \$1,817,219.66;

FY 2019 - \$1,860,252.62;

FY 2020 - \$1,904,911.27.

The cost for FY 2021 and 2022 shall be that of the previous year's contract adjusted in an amount not to exceed the Bureau of Labor Statistics Consumer Price Index - Philadelphia-

Wilmington-Atlantic City for the previous twelve-month period ending in April (“CPI Adjustment”). Likewise, the cost for the City’s three (3) renewal options of one (1) year each shall be that of the previous year’s contract plus the CPI Adjustment. The above stated costs are “target” costs only, i.e., fixed costs for predictable and routine services. “Non-target” costs, i.e., the cost of services due to unpredictable events such as accidents, misuse, and additional services requested by the City, are extra.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The Contract between the City and First Vehicle Services, Inc., a copy of which (without exhibits) is attached hereto as Exhibit “A”, for a period of five years (5) years, with three (3) possible renewal periods of one (1) year each, at the following cost (FY 2018 - \$1,817,219.66; FY 2019 - \$1,860,252.62; FY 2020 - \$1,904,911.27; FY 2021 - \$1,904,911.27 plus CPI Adjustment; FY 2022 - FY 2021 contract amount for target costs plus CPI Adjustment; FY 2023 - FY 2022 contract amount for target costs plus CPI Adjustment; FY 2024 - FY 2023 contract amount for target costs plus CPI Adjustment; FY 2025 - FY 2024 contract amount for target costs plus CPI Adjustment) is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute as many copies of said contract, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First Reading August 24, 2017
Second Reading . . . August 24, 2017
Third Reading Sept. 21, 2017

Passed by City Council, Sept. 21, 2017

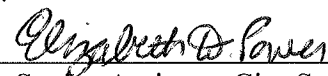


President of City Council

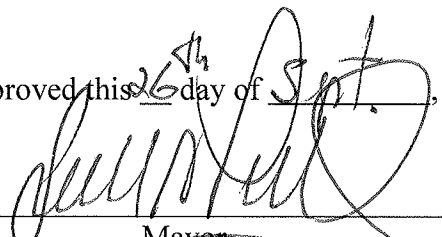
ATTEST 

City Clerk

Approved as to form this 21st day of
September, 2017.



Senior Assistant City Solicitor

Approved this 26th day of Sept., 2017.


Mayor

SYNOPSIS: This Substitute Ordinance authorizes the City to enter into a Fleet Management and Maintenance Contract (the "Contract") with First Vehicle Services, Inc., for a period of five (5) years from October 1, 2017 through June 30, 2022 at the following cost: FY 2018 - \$1,817,219.66; FY 2019 - \$1,860,252.62; FY 2020 - \$1,904,911.27; FY 2021 - \$1,904,911.27 plus CPI Adjustment; and FY 2022 - FY 2021 contract amount for target costs plus CPI Adjustment. At the option of the City, there is the possibility of three (3) additional extensions of one (1) year thereafter at the following cost: FY 2023 - FY 2022 contract amount for target costs plus CPI Adjustment; FY 2024 - FY 2023 contract amount for target costs plus CPI Adjustment; and FY 2025 - FY 2024 contract amount for target costs plus CPI Adjustment.

FISCAL IMPACT: This Substitute Ordinance authorizes the execution of the Contract for the period of five (5) years from October 1, 2017 through June 30, 2022 at the following cost: FY 2018 - \$1,817,219.66; FY 2019 - \$1,860,252.62; FY 2020 - \$1,904,911.27; FY 2021 - \$1,904,911.27 plus CPI Adjustment; and FY 2022 - FY 2021 contract amount for target costs plus CPI Adjustment. At the option of the City, there is the possibility of three (3) additional extensions of one (1) year thereafter at the following cost: FY 2023 - FY 2022 contract amount for target costs plus CPI Adjustment; FY 2024 - FY 2023 contract amount for target costs plus CPI Adjustment; and FY 2025 - FY 2024 contract amount for target costs plus CPI Adjustment.

W0094812

EXHIBIT A

FLEET MANAGEMENT AND MAINTENANCE CONTRACT

THIS AGREEMENT (hereinafter referred to as either "Contract" or "Agreement"), made this ____ day of _____ 2017, by and between THE CITY OF WILMINGTON, a municipal corporation of the State of Delaware, with its principal place of business at the Louis L. Redding City/County Building, 800 North French Street, Wilmington, Delaware 19801-3537 (hereinafter referred to as "City"), and FIRST VEHICLE SERVICES, INC., an Ohio corporation, with its principal place of business at 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202 (hereinafter referred to as "Contractor");

WHEREAS, several years ago, the City, in an effort to conserve and reduce expenditures, privatized the City's motor vehicle facility which maintains the City's fleet of motor vehicles; and

WHEREAS, the City's current contract for fleet maintenance is set expire soon, so the City requested proposals from organizations for a new contract; and

WHEREAS, after receiving proposals, the City selected Contractor to perform the services as hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

I. Contract Documents

The following documents are attached to this Agreement, as indicated, and are hereby made a part of this Agreement and shall apply to the services provided by Contractor hereunder, except as otherwise specified in this Agreement:

1. City's Request for Proposals including addendums 1, 2, and 3 (Exhibit A)
2. First Vehicle Services' Cost Proposal (Exhibit B)
3. First Vehicle Services' Technical Proposal (Exhibit C)
4. First Vehicle Services' Contract Clarification Letter dated June 9, 2017 with attached Vehicle Equivalent Units and Replacement Parameters (Exhibit D)
5. First Vehicle Services' Contract Clarification Letter regarding Emergency Support Labor dated June 14, 2017 (Exhibit E)
6. Memorandum from Mercury Associates to the City dated June 9, 2017 regarding whether First Vehicles Services' Proposal satisfies the City's Request for Proposals (Exhibit F)

In the event of any future disagreement regarding the terms of service under this Agreement, the following order of precedence is established:

1. This Agreement (without exhibits)
2. First Vehicles Services' Cost Proposal (Exhibit B)
3. First Vehicle Services' Contract Clarification Letter dated June 9, 2017 with attached Vehicle Equivalent Units and Replacement Parameters and First Vehicle Services'

Contract Clarification Letter regarding Emergency Support Labor dated June 14, 2017 (Exhibits D and E)

4. City's Request for Proposals including addendums 1, 2, and 3 (Exhibit A)
5. First Vehicle Services' Technical Proposal (Exhibit C)

II. Scope of Services

Contractor agrees to provide those services and perform those functions set out in the Agreement, including, but not limited to, the Scope of Services (Section 2 of Exhibit A), Target Services (Section 7 of Exhibit A), Non-Target Services (Section 8 of Exhibit A), Parts and Inventory Management (Section 9 of Exhibit A), Fueling Services (Section 10 of Exhibit A), Fleet Management Services (Section 11 of Exhibit A), and Quality Assurance Program (Section 12 of Exhibit A).

III. Term of Contract

The term of the Agreement shall be for a period of five (5) years from October 1, 2017 until June 30, 2022. The first year of the Agreement shall run from October 1, 2017 until June 30, 2018. All subsequent years of the Agreement shall run from July 1st through June 30th of the following year. The City reserves the right to extend the Agreement, at its sole discretion but with the mutual agreement of the Contractor, for a maximum of three additional one-year (1) periods in accordance with Section 3.4 of Exhibit A. The total duration of this Agreement, including the three allowable one-year (1) extensions, shall not exceed eight (8) years.

IV. Payment

Payment shall be made by the City to the Contractor as provided in this Agreement after the satisfactory completion of the work specified in this Agreement and upon proper, undisputed invoice to the City.

V. Default

If, at any time subsequent to the date of this Agreement, any one or more of the following events of default occur, the City may terminate this Agreement as hereafter provided:

- (a) Contractor shall neglect or fail to perform or observe in a material manner any of the covenants or agreements herein contained on the part of Contractor to be performed or observed, and such default shall not be remedied by Contractor within thirty (30) days after notice to Contractor specifying such neglect or failure; or
- (b) Contractor shall make an assignment for the benefits of creditors or shall become insolvent; or
- (c) Contractor shall vacate or abandon the facilities or fail to open the facilities for the conduct of business for five (5) consecutive business days, except for reasons of extreme emergency; or
- (d) Contractor shall seek or consent to or acquiesce in the appointment of any receiver or liquidator for all or a substantial part of its assets; or

- (e) A petition shall be filed by or against Contractor under any law seeking any reorganization, arrangement, readjustment, composition, liquidation, or desertion, stay or other similar relief under any present or future state or federal statute, law, or regulation and shall remain undismissed for a period of thirty (30) days.

VI. Termination

In the event of default in accordance with the provisions of Section V. of this Agreement, City may terminate this Agreement upon thirty (30) days' notice to Contractor. In the event of termination, Contractor shall peacefully grant and surrender the facilities to the City. The costs and expenses incurred by City in the event of a default shall be paid by Contractor. The Contractor agrees to surrender peacefully said equipment and facilities upon receiving an itemized receipt from the City for said items, and cooperate to the extent necessary to enable the City to take over and carry out the services herein described. All payments by the City, except those for services previously rendered or costs incurred and reimbursable to the Contractor pursuant to this Agreement, shall cease. The City shall have the option to transfer all data contained by the Contractor's Fleet Management Information system to a replacement system furnished by the City. The Contractor agrees that in the event it disputes the City's right to invoke the provisions of this Section, it will not seek injunctive or other similar relief, but will either negotiate an adjustment of the matter with the City or seek, as its remedy, monetary damages in a court of competent jurisdiction.

VII. Notice

Any written notice to be given hereunder by either party to the other party shall be effected by certified mail, return receipt requested. Notice to the Contractor shall be sufficient if made or addressed to the President of First Vehicle Services, Inc., 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202 with a copy to General Counsel at the address. Notice to the City shall be sufficient if made addressed to the Department of Public Works, Louis L. Redding City/County Building, 800 French Street, Wilmington, Delaware 19801, attention: Commissioner of Public Works. Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this Section.

VIII. City Ordinance

Nothing contained in any ordinance or regulation of the City hereafter adopted pertaining to the management of the fleet and unit maintenance shall in any way be construed to affect or alter the duties, responsibilities, and operation of the Contractor in the performance of the terms of this Agreement, unless any such change is agreed to in writing by both the Contractor and the City.

IX. Modification/Amendment

This Agreement cannot be altered, amended, or modified except by writing signed by the parties hereto.

X. Right to Require Performance

The failure of the City at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

XI. Assignment

The duties and obligations assumed by Contractor under this Agreement are not transferable or assignable without the prior written consent of the City, which consent shall not be unreasonably withheld, provided Contractor is not in default at the time of the proposed assignment.

XII. Governing Law and Forum

This Agreement and the interpretation of the provisions contained herein shall be governed by and construed in accordance with the laws of the State of Delaware. All disputes in connection with this Agreement shall be resolved by the courts of the State of Delaware. Contractor agrees to submit exclusively to the jurisdiction and venue of said courts.

XIII. Use of Subcontractors

Contractor may use qualified consultants, subconsultants, or subcontractors to perform the services required this Agreement upon the approval of the City.

XIV. Business License

Contractor shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

XV. Taxes

Contractor shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.

XVI. Discrimination and Harassment

In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin, or sexual orientation.

XVII. Independent Contractor

Contractor (and its employees and agents) is an independent contractor and not an employee or agent of the City.

XVIII. Severability

The Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be

invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

XIX. Signed Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first above- referenced.

ATTEST:

Maribel Seijo
City Clerk

CITY OF WILMINGTON

By:

[Signature]
Mayor

ATTEST:

FIRST VEHICLE SERVICES, INC.

By:

Approved as to form this

11th day of September 2017

Elizabeth D. Power
Senior Assistant City Solicitor

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