



County of Fairfax, Virginia

ADDENDUM

Date: March 29, 2011

ADDENDUM NO. 1

TO: ALL PROSPECTIVE OFFERORS

REFERENCE: RFP11-205753-10

TITLE: Public Safety and Emergency Preparedness Equipment and Related Services

DUE DATE/TIME: April 14, 2011 / 2:00 P.M. EDT (Revised)

The referenced request for proposal is amended as follows:

1. The due date/time has been changed from April 7, 2011 / 2:00 P.M. EDT to April 14, 2011 / 2:00 P.M. EDT
2. Delete in its entirety, Appendix B titled "**ADMINISTRATION AGREEMENT ADDENDUM**" (U.S. Communities Government Purchasing Alliance form), and replace with the revised Appendix B, attached hereto.
3. Refer Attachment I for questions and answers received via e-mail and from the pre-proposal conference held on March 23, 2011 at 10:30 A.M.

All other terms and conditions remain unchanged.

Lonnette Robinson, CPPB
Contract Specialist Supervisor, Team 1

THIS ADDENDUM IS ACKNOWLEDGED AND IS CONSIDERED A PART OF THE SUBJECT REQUEST FOR PROPOSAL:

Name of Firm

(Signature)

(Date)

ONE SIGNED COPY OF ADDENDUM MUST BE RETURNED PRIOR TO DATE/TIME OF CLOSING OR MUST ACCOMPANY PROPOSAL.

Department of Purchasing & Supply Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/dpsm
Phone 703-324-3201, TTY: 1-800-828-1140, Fax: 703-324-3228

ADMINISTRATION AGREEMENT

This ADMINISTRATION AGREEMENT ("Agreement") is made as of _____, by and between U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE ("U.S. Communities") and _____ ("Supplier").

RECITALS

WHEREAS, _____ ("Lead Public Agency") has entered into a certain Master Agreement dated as of _____, referenced as Agreement No. _____, by and between Lead Public Agency and Supplier (as amended from time to time in accordance with the terms thereof, the "Master Agreement") for the purchase of _____ (the "Products & Services");

WHEREAS, the Master Agreement provides that any state, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization (each a "Public Agency" and collectively, "Public Agencies") may purchase Products and Services at the prices indicated in the Master Agreement upon prior registration with U.S. Communities, in which case the Public Agency becomes a "Participating Public Agency";

WHEREAS, U.S. Communities has the administrative and legal capacity to administer purchases under the Master Agreement to Participating Public Agencies;

WHEREAS, U.S. Communities serves as the administrative agent for Lead Public Agency and other lead public agencies in connection with other master agreements offered by U.S. Communities;

WHEREAS, Lead Public Agency desires U.S. Communities to proceed with administration of the Master Agreement on the same basis as other master agreements;

WHEREAS, "U.S. Communities Government Purchasing Alliance" is a trade name licensed by U.S. Communities Purchasing & Finance Agency; and

WHEREAS, U.S. Communities and Supplier desire to enter into this Agreement to make available the Master Agreement to Participating Public Agencies.

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, U.S. Communities and Supplier hereby agree as follows:

ARTICLE I

GENERAL TERMS AND CONDITIONS

1.1 The Master Agreement, attached hereto as Exhibit A and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.

1.2 U.S. Communities shall be afforded all of the rights, privileges and indemnifications afforded to Lead Public Agency under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to U.S. Communities under this Agreement

including, without limitation, Supplier's obligation to provide insurance and certain indemnifications to Lead Public Agency.

1.3 Supplier shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.

1.4 U.S. Communities shall perform all of its duties, responsibilities and obligations as administrator of purchases under the Master Agreement as set forth herein, and Supplier acknowledges that U.S. Communities shall act in the capacity of administrator of purchases under the Master Agreement.

1.5 With respect to any purchases made by Lead Public Agency or any Participating Public Agency pursuant to the Master Agreement, U.S. Communities (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Supplier, Lead Public Agency or such Participating Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Lead Public Agency, any Participating Public Agency or any employee of Lead Public Agency or a Participating Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by a Participating Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. U.S. Communities makes no representations or guaranties with respect to any minimum purchases required to be made by Lead Public Agency, any Participating Public Agency, or any employee of Lead Public Agency or a Participating Public Agency under this Agreement or the Master Agreement.

ARTICLE II

TERM OF AGREEMENT

2.1 This Agreement is effective as of _____ and shall terminate upon termination of the Master Agreement or any earlier termination in accordance with the terms of this Agreement, provided, however, that the obligation to pay all amounts owed by Supplier to U.S. Communities through the termination of this Agreement and all indemnifications afforded by Supplier to U.S. Communities shall survive the term of this Agreement.

ARTICLE III

REPRESENTATIONS AND COVENANTS

3.1 U.S. Communities views the relationship with Supplier as an opportunity to provide benefits to both Public Agencies and Supplier. The successful foundation of the relationship requires certain representations and covenants from both U.S. Communities and Supplier.

3.2 U.S. Communities' Representations and Covenants.

(a) **Marketing.** U.S. Communities shall proactively market the Master Agreement to Public Agencies using resources such as a network of major sponsors including the National League of Cities (NLC), National Association of Counties (NACo), United States Conference of Mayors (USCM), Association of School Business Officials (ASBO) and National Institute of Government Purchasing (NIGP) (collectively, the "**Founding Co-Sponsors**") and individual state-level sponsors. In addition, the U.S. Communities staff shall enhance Supplier's marketing efforts through meetings with Public

Agencies, participation in key events and tradeshow and by providing online tools to Supplier's sales force.

(b) Training and Knowledge Management Support. U.S. Communities shall provide support for the education, training and engagement of Supplier's sales force as provided herein. Through its staff (each, a "Program Manager" and collectively, the "Program Managers"), U.S. Communities shall conduct training sessions with Supplier and shall conduct calls jointly with Supplier to Public Agencies. U.S. Communities shall also provide Supplier with access to U.S. Communities' private intranet website which provides presentations, documents and information to assist Supplier's sales force in effectively promoting the Master Agreement.

3.3 Supplier's Representations and Covenants. Supplier hereby represents and covenants as follows in order to ensure that Supplier is providing the highest level of public benefit to Participating Public Agencies (such representations and covenants are sometimes referred to as "Supplier's Commitments") and are comprised of the Corporate Commitment, Pricing Commitment, Economy Commitment and Sales Commitment):

(a) Corporate. Supplier shall ensure that the U.S. Communities program and the Master Agreement are actively supported by Supplier's senior executive management.

(i) The pricing, terms and conditions of the Master Agreement shall be Supplier's primary offering to Public Agencies.

(ii) Supplier shall advise all existing Public Agencies that are current customers of Supplier as to the value and pricing benefits offered under the Master Agreement.

(iii) Upon authorization by a Public Agency, Supplier shall transition such Public Agency to the pricing, terms and conditions of the Master Agreement.

(iv) Supplier shall provide a national/senior management account representative with the authority and responsibility to ensure that the Supplier's Commitments are maintained at all times. Supplier shall also designate a lead referral contact person who shall be responsible for receiving communications from U.S. Communities concerning new Participating Public Agency registrations and for ensuring timely follow-up by Supplier's staff to requests for contact from Participating Public Agencies. Supplier shall also provide the personnel necessary to implement and support a supplier-based internet web page dedicated to Supplier's U.S. Communities program and linked to U.S. Communities' website and shall implement and support such web page.

(v) Supplier shall demonstrate in its request for proposal ("RFP") or invitation to bid ("ITB") response and throughout the term of the Master Agreement that senior management fully supports the U.S. Communities program and its commitments and requirements. Senior management is defined as the executive(s) with companywide authority.

(vi) Supplier's field force (direct and/or authorized dealer or representative) must lead with the Master Agreement when calling on Public Agencies. If Supplier has alternate cooperative vehicles (i.e. state contracts, regional cooperatives) the Master Agreement shall be the lead offering and not just one of Supplier's options. If Supplier meets resistance or objection to utilizing the Master Agreement from a Public Agency, prior to offering an alternate contract option, Supplier's sales representative must contact the U.S. Communities Program Manager in the area and request assistance in overcoming the barrier or objection. If the U.S. Communities Program Manager is unable to resolve the Public Agency's objection, Supplier is permitted to pursue other options.

(vii) In states where Supplier has an existing state contract or cooperative contract, Supplier shall notify the state of the Master Agreement and transition the state to the pricing, terms and conditions of the Master Agreement upon the state's request. Regardless of whether the state decides to transition to the Master Agreement, Supplier shall primarily offer the Master Agreement to all counties, cities, special districts, local governments, school districts, private K-12 schools, technical or vocational schools, higher education institutions (including community colleges, colleges and universities, both public and private), other government agencies and nonprofit organizations located within the state.

(b) **Pricing.** Supplier represents to U.S. Communities that the pricing offered under the Master Agreement is the lowest overall available pricing (net to purchaser) that it offers to Public Agencies.

(i) Contracts Offering Lower Prices. If a pre-existing contract and/or a Public Agency's unique buying pattern provide one or more Public Agencies a lower price than that offered under the Master Agreement, Supplier shall be required to match that lower pricing for customers under the Master Agreement and inform the eligible Public Agencies that the lower pricing is available under the Master Agreement. If an eligible Public Agency requests to be transitioned to the Master Agreement, Supplier shall do so and report the Public Agency's purchases under the U.S. Communities contract going forward. The price match only applies to the eligible Public Agencies. Below are three examples of Supplier's obligation to match the pricing under Supplier's contracts offering lower prices:

(A) Supplier holds a state contract with lower pricing that is available to all Public Agencies within the state. Supplier would be required to match the lower state pricing under the Master Agreement and make it available to all Public Agencies within the state.

(B) Supplier holds a regional cooperative contract with lower pricing that is available only to the ten cooperative members. Supplier would be required to match the lower cooperative pricing under the Master Agreement and make it available to the ten cooperative members.

(C) Supplier holds a contract with an individual Public Agency. The Public Agency contract does not contain any cooperative language and therefore other Public Agencies are not eligible to utilize the contract. Supplier would be required to match the lower pricing under the Master Agreement and make it available only to the individual Public Agency.

(ii) Deviating Buying Patterns. Occasionally U.S. Communities and Supplier may interact with a Public Agency that has a buying pattern or terms and conditions that considerably deviate from the normal Public Agency buying pattern and terms and conditions, and causes Supplier's pricing under the Master Agreement to be higher than an alternative contract held by Supplier. This could be created by a unique end-user preference or requirements. In the event that this situation occurs, Supplier may address the issue by lowering the price under the Master Agreement on the item(s) causing the large deviation for that Public Agency. Supplier would not be required to lower the price for other Public Agencies.

(iii) Supplier's Options in Responding to a Third Party RFP or ITB. While it is the objective of U.S. Communities to encourage Public Agencies to piggyback onto its contracts rather than issue their own RFPs and ITBs, U.S. Communities recognizes that for various reasons some Public Agencies will issue their own solicitations. The following options are available to Supplier when

responding to a Public Agency solicitation:

(A) Supplier may opt not to respond to the RFP or ITB. Supplier may make the Master Agreement available to the Public Agency as a comparison to its solicitation responses.

(B) Supplier may respond with the pricing, terms and conditions of the Master Agreement. If Supplier is awarded the contract, the sales would be reported as sales under the Master Agreement.

(C) If competitive conditions require pricing lower than the standard Master Agreement pricing, Supplier may submit lower pricing through the Master Agreement. If Supplier is awarded the contract, the sales would be reported as sales under the Master Agreement.

(D) Supplier may respond to the RFP or ITB with pricing that is higher (net to buyer) than the pricing offered under the Master Agreement.

(E) Supplier may respond to the RFP or ITB with pricing that is higher (net to buyer) than the pricing offered under the Master Agreement and if an alternative response is permitted, Supplier may offer the pricing under the Master Agreement as an alternative for consideration.

(c) **Economy.** Supplier shall demonstrate the benefits, including the pricing advantage, of the Master Agreement over alternative competitive solicitation pricing and shall proactively offer the terms and pricing under the Master Agreement to Public Agencies as a more effective alternative to the cost and time associated with such alternate bids and solicitations.

(d) **Sales.** Supplier shall market the Master Agreement through Supplier's sales force or dealer network that is properly trained, engaged and committed to offering the Master Agreement as Supplier's primary offering to Public Agencies. Supplier's sales force compensation and incentives shall be greater than or equal to the compensation and incentives earned under other contracts to Public Agencies.

(i) **Supplier Sales.** Supplier shall be responsible for proactive direct sales of Supplier's goods and services to Public Agencies and the timely follow-up to sales leads identified by U.S. Communities. Use of product catalogs, targeted advertising, direct mail and other sales initiatives are encouraged. All of Supplier's sales materials targeted towards Public Agencies shall include the U.S. Communities logo. U.S. Communities shall provide Supplier with its logo and the standards to be employed in the use of the logo. During the term of the Agreement, Supplier grants to U.S. Communities an express license to reproduce and use Supplier's name and logo in connection with the advertising, marketing and promotion of the Master Agreement to Public Agencies. Supplier shall assist U.S. Communities by providing camera-ready logos and by participating in related trade shows and conferences. At a minimum, Supplier's sales initiatives shall communicate that (i) the Master Agreement was competitively solicited by the Lead Public Agency, (ii) the Master Agreement provides the best government pricing, (iii) there is no cost to Participating Public Agencies, and (iv) the Master Agreement is a non-exclusive contract.

(ii) **Branding and Logo Compliance.** Supplier shall be responsible for complying with the U.S. Communities branding and logo standards and guidelines. Prior to use by

Supplier, all U.S. Communities related marketing material must be submitted to U.S. Communities for review and approval.

(iii) Sales Force Training. Supplier shall be responsible for the training of its national sales force on the Master Agreement and U.S. Communities program. U.S. Communities shall be available to train regional or district managers and generally assist with the education of sales personnel.

(iv) Participating Public Agency Access. Supplier shall establish the following communication links to facilitate customer access and communication:

(A) A dedicated U.S. Communities internet web-based homepage containing:

- (1) U.S. Communities standard logo with Founding Co-Sponsors logos;
- (2) Copy of original request for proposal or invitation to bid;
- (3) Copy of Master Agreement including any amendments;
- (4) Summary of products and pricing;
- (5) Electronic link to U.S. Communities' online registration page; and
- (6) Other promotional material as requested by U.S. Communities.

(B) A dedicated toll-free national hotline for inquiries regarding U.S. Communities.

(C) A dedicated email address for general inquiries in the following format: uscommunities@(name of supplier).com.

(v) Electronic Registration. Supplier shall be responsible for ensuring that each Public Agency has completed U.S. Communities' online registration process prior to processing the Public Agency's first sales order.

(vi) Supplier's Performance Review. Upon request by U.S. Communities, Supplier shall participate in a performance review meeting with U.S. Communities to evaluate Supplier's performance of the covenants set forth in this Agreement.

3.4 Breach of Supplier's Representations, Warranties and Covenants. The representations and covenants set forth in this Agreement are the foundation of the relationship between U.S. Communities and Supplier. If Supplier is found to be in violation of, or non-compliance with, one or more of the representations and covenants set forth in this Agreement, Supplier shall have ninety (90) days from the notice of default to cure such violation or non-compliance. Failure by Supplier to cure such violation or non-compliance within ninety (90) days shall result in termination of this Agreement.

ARTICLE IV

PRICING AUDITS

4.1 Supplier shall, at Supplier's sole expense, maintain an accounting of all purchases made by Lead Public Agency and Participating Public Agencies under the Master Agreement. U.S. Communities and Lead Public Agency each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. U.S. Communities shall have the authority to conduct random audits of Supplier's pricing that is offered to Participating Public Agencies at U.S. Communities' sole cost and expense. Notwithstanding the foregoing, in the event that U.S. Communities is made aware of any pricing being offered to Participating Public Agencies that is materially inconsistent with the pricing under the Master Agreement, U.S. Communities shall have the ability to conduct an extensive audit of Supplier's pricing at Supplier's sole cost and expense. U.S. Communities may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Lead Public Agency or U.S. Communities.

ARTICLE V

FEES & REPORTING

5.1 Administrative Fees. Supplier shall pay to U.S. Communities a monthly administrative fee based upon the total sales price of all purchases shipped and billed pursuant to the Master Agreement, excluding taxes, in the amount of (a) two percent (2%) of aggregate purchases made during the month which comprise annual sales of the first \$340,000,000.00; and then (b) two and one-half percent (2.5%) of aggregate purchases made during the month which comprise annual sales exceeding \$340,000,000.00 (individually and collectively, "Administrative Fees"). Supplier's annual sales shall be measured on a calendar year basis. All Administrative Fees shall be payable in U.S. Dollars and shall be made by check or wire to U.S. Communities, or its designee or trustee as may be directed in writing by U.S. Communities. Administrative Fees shall be due and payable within thirty (30) days of the end of each calendar month for purchases shipped and billed during such calendar month.

5.2 Sales Reports. Within thirty (30) days of the end of each calendar month, Supplier shall deliver to U.S. Communities an electronic accounting report, in the format prescribed by Exhibit B, attached hereto, summarizing all purchases made under the Master Agreement during such calendar month ("Sales Report"). All purchases indicated in the Sales Report shall be denominated in U.S. Dollars. All purchases shipped and billed pursuant to the Master Agreement for the applicable calendar month shall be included in the Sales Report. U.S. Communities reserves the right upon reasonable advance notice to Supplier to change the prescribed report format to accommodate the distribution of the Administrative Fees to its program sponsors and state associations.

(a) Monthly Sales Reports shall include all sales reporting under the Master Agreement, and a breakout of Environmental Preferable (Green) sales reporting. Supplier must make reasonable attempts at filling in all required information and contact U.S. Communities with a plan to correct any deficiencies of data field population.

(b) Submitted reports shall be verified by U.S. Communities against its registration database. Any data that is inconsistent with the registration database shall be changed prior to processing.

5.3 Exception Reporting/Sales Reports Audits. U.S. Communities or its designee may, at its sole discretion, compare Supplier's Sales Reports with Participating Public Agency records or other sales analysis performed by Participating Public Agencies, sponsors, advisory board members or U.S.

Communities staff. If there is a material discrepancy between the Sales Report and such records or sales analysis as determined by U.S. Communities, U.S. Communities shall notify Supplier in writing and Supplier shall have thirty (30) days from the date of such notice to resolve the discrepancy to U.S. Communities' reasonable satisfaction. Upon resolution of the discrepancy, Supplier shall remit payment to U.S. Communities' trustee within fifteen (15) calendar days. Any questions regarding an exception report should be directed to U.S. Communities in writing to reporting@uscommunities.org. If Supplier does not resolve the discrepancy to U.S. Communities' reasonable satisfaction within thirty (30) days, U.S. Communities shall have the right to engage outside services to conduct an independent audit of Supplier's reports and Supplier shall be obligated to reimburse U.S. Communities for any and all costs and expenses incurred in connection with such audit.

5.4 Online Reporting. Within sixty (60) days of the end of each calendar quarter, U.S. Communities shall provide online reporting to Supplier containing Supplier's sales reporting for such calendar quarter. Supplier shall contact U.S. Communities within fifteen (15) days of receiving notification of the online reporting and report to U.S. Communities any concerns or disputes regarding the reports, including but not limited to concerns regarding the following:

Report Name	Follow up with U.S. Communities
5 Qtr Drop Sales Analysis	Financial & Reporting Manager
Zero States Sales Report	Program Manager
Registered Agency Without Sales Report	Program Manager

Supplier shall have access to the above reports through the U.S. Communities intranet website. The following additional reports are also available to Supplier and are useful in resolving reporting issues and enabling Supplier to better manage its Master Agreement:

- (i) Agency Sales by Population/Enrollment Report
- (ii) Hot Prospect Sales Report
- (iii) New Lead Sales Report
- (iv) State Comparison Sales Report
- (v) Advisory Board Usage Report
- (vi) Various Agency Type Comparison Reports
- (vii) Sales Report Builder

5.5 Supplier's Failure to Provide Reports or Pay Administrative Fees. Failure to provide a Sales Report or pay Administrative Fees within the time and in the manner specified herein shall be regarded as a material breach under this Agreement and if not cured within thirty (30) days of written notice to Supplier, shall be deemed a cause for termination of the Master Agreement at Lead Public Agency's sole discretion or this Agreement at U.S. Communities' sole discretion. All Administrative Fees not paid within thirty (30) days of the end of the previous calendar month shall bear interest at the rate of one and one-half percent (1.5%) per month until paid in full.

ARTICLE VI

MISCELLANEOUS

6.1 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

6.2 Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.

6.3 Assignment.

(a) Supplier. Neither this Agreement nor any rights or obligations hereunder shall be assignable by Supplier without prior written consent of U.S. Communities, and any assignment without such consent shall be void.

(b) U.S. Communities. This Agreement and any rights or obligations hereunder may be assigned by U.S. Communities in U.S. Communities' sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform U.S. Communities' obligations hereunder.

6.4 Notices. All reports, notices or other communications given hereunder shall be delivered by first-class mail, postage prepaid, or overnight delivery requiring signature on receipt to the addresses as set forth below. U.S. Communities may, by written notice delivered to Supplier, designate any different address to which subsequent reports, notices or other communications shall be sent.

U.S. Communities: U.S. Communities
2033 N. Main Street, Suite 700
Walnut Creek, California 94596
Attn: Program Manager Administration

Lead Public Agency: _____

Attn: _____

Supplier: _____

Attn: U.S. Communities Program Manager

6.5 Severability. If any provision of this Agreement shall be deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

6.6 Waiver. Any failure of a party to enforce, for any period of time, any of the provisions under this Agreement shall not be construed as a waiver of such provisions or of the right of said party thereafter to enforce each and every provision under this Agreement.

6.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.8 Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the parties hereto.

6.9 Governing Law; Arbitration. This Agreement will be governed by and interpreted in accordance with the laws of the State of California without regard to any conflict of laws principles. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this dispute resolution clause, shall be determined by arbitration in Walnut Creek, California, before one (1) arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The prevailing party will be entitled to recover its reasonable attorneys' fees and arbitration costs from the other party. The arbitration award shall be final and binding. Each party commits that prior to commencement of arbitration proceedings, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The mediation will be conducted by each party designating a duly authorized officer or other representative to represent the party with the authority to bind the party, and that the parties agree to exchange informally such information as is reasonably necessary and relevant to the issues being mediated. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator or any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within thirty (30) days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrator. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

6.10 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon U.S. Communities, Supplier and any successor and assign thereto; subject, however, to the limitations contained herein.

[Remainder of Page Intentionally Left Blank – Signatures Follow]

IN WITNESS WHEREOF, U.S. Communities has caused this Agreement to be executed in its name and Supplier has caused this Agreement to be executed in its name, all as of the date first written above.

U.S. Communities:

U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE

By _____

Name: _____

Title: _____

Supplier:

By _____

Name: _____

Title: _____

ADMINISTRATION AGREEMENT ADDENDUM

AFFILIATE PROGRAMS

U.S. Communities recently established Canadian Communities, an affiliate program in Canada which offers certain qualified contract awards. U.S. Communities shall continue to explore other practical international opportunities based upon the capacity of its contract suppliers to efficiently serve Public Agencies internationally.

Understanding that Supplier may not have the capacity or desire to participate in Canadian Communities or other affiliate programs, U.S. Communities offers these opportunities on a voluntary basis to Supplier.

The terms, conditions and commitments outlined and agreed upon in the U.S. Communities Administration Agreement shall be applied to Canadian Communities and any other international opportunities.

_____ Supplier wishes to participate in Canadian Communities and other international opportunities, currently has the capacity to serve Canadian Public Agencies, and agrees to abide by the terms, conditions and commitments of the executed U.S. Communities Administration Agreement.

_____ Supplier does not wish to participate in Canadian Communities or other international opportunities.

SUPPLIER:

_____,
a _____

By _____

Name: _____

Title: _____

EXHIBIT A
MASTER AGREEMENT

(To Be Attached)

EXHIBIT B

SALES REPORT FORMAT

(To Be Attached)

- Q1. It is stated in the RFP that Offers may submit a response for sections A (Public Safety and Emergency Preparedness Equipment and Related Services) and/or B (Automated External Defibrillators (AEDs) Equipment, Accessories, Service, Training and Technology Support). If an Offeror only bids one section, will that Offeror be at a disadvantage compared to an Offeror that has bid both sections?
- A1. No.
- Q2. If an Offeror cannot accept the request for Canadian Public Agencies, will this be considered a negative in the source selection process compared to an Offeror who did accept the Canadian Public Agencies?
- A2. No.
- Q3. Regarding the public agencies and political subdivisions that are eligible to access the contract award in accordance with this RFP. Will the winning contractor need to execute individual agreements with the applicable public agencies and political subdivisions?
- A3. The Master Intergovernmental Cooperative Purchasing Agreement, pages 50-51 of the RFP, allows Participating Public Agencies to utilize the contract without the requirement of executing a separate agreement. A Participating Public Agency may for its own purposes, from time to time, ask for a separate agreement.
- Q4. US Communities provides Suppliers with sales training, and a host of online marketing and sales management tools to effectively increase sales through US Communities. Is there a cost for the sales training and tools? How many people can be trained and how soon after award can the training begin?
- A4. There is no cost for the sales training and tools we provide to Suppliers. Please see New Supplier Implementation Checklist on pages 12-13 of the RFP for timeline. Initial training takes place via WebEx and we would anticipate all of your sales representatives to participate. In addition, we would anticipate face-to-face training at the branch and regional locations as well as at national meetings.
- Q5. Suppliers have the ability to add their products to the Marketplace at no cost. What is the approval process to add a product (SKU) to the contract, how often can a Supplier add products and how long will it take to add products?
- A5. The U.S. Communities Marketplace is typically managed with a Supplier hosted catalog which would allow for easy updates. Vendors are required to update their marketplace sites with product and pricing updates.
- Q6. What is the process to delete products? Is it a different process for a discontinued product/SKU than a normal delete?
- A6. See answer to Q5
- Q7. Will US Communities/County of Fairfax agree to negotiate the applicable terms and conditions contained in the RFP?
- A7. There are some provisions that cannot be changed due to law, rule or regulation. Offerors may propose language that may be negotiated. Offerors are reminded to clearly identify those items they wish to negotiate.

- Q8. What is Fairfax County/US Communities's position if a public agency/political subdivision insist on their terms and conditions taking precedence over US Communities terms and conditions?
- A8. The Master Intergovernmental Cooperative Purchasing Agreement, pages 50-51 of the RFP, permits a Participating Public Agency and Supplier to agree upon certain different or alternative terms and conditions. Each Supplier has discretion as to whether such terms and conditions are acceptable.
- Q9. Multiple awards may be issued as a result of the solicitation. Will there be more than one award?
- A9. It is not known at this time, it depends on the responses received to this RFP.
- Q10. How will US Communities provide effective Marketing Support to Suppliers when there are multiple awards? How will US Communities avoid a conflict of interest?
- A10. There may or may not be a multiple award for this contract. Should there be multiple awards; U.S. Communities has a long history of very successful multiple award contracts such as Office Furniture and Playground Equipment. This is demonstrated by the large volume of the contracts and the continued participation of the same Suppliers successfully pursuing and being re-awarded contracts. The U.S. Communities support is the same no matter if there is a single award or a multiple award. U.S. Communities does not advocate for a particular supplier. U.S. Communities' role is to
1. Educate Participating Public Agencies about the program
 2. Remove barriers for Participating Public Agencies to use the program
 3. Open doors for the Supplier
 4. Train and education Supplier
- It is the Supplier's responsibility to prove the value of its offering to Participating Public Agencies.
- Q11. When there are multiple awards, how do the public agencies compete their procurements?
- A11. If multiple awards are made, Participating Public Agencies will have the discretion to use the awarded Supplier of their choice.
- Q12. Please outline the source selection process along with the weights assign to each selection criterion?
- A12. Please reference paragraph 13 titled BASIS FOR AWARD for the source selection process. In addition, the County cannot release the weights criteria at this time; it will be available once the contract is awarded.
- Q13. Do new State and Local Governments that want to participate in this US Communities Contract need to execute a Participating Addendum or anything similar?
- A13. No. U.S. Communities only requires that the Participating Public Agency register with U.S. Communities if it is not already registered. When registering, the Participating Public Agency agrees to the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) which allows them to piggyback off of our contracts.
- Q14. Is the awarded contract a SKU driven contract, if so when after award are the SKUs provided? Is there a minimum amount?
- A14. No.

- Q15. In Appendix B, section viii, will the following language be deleted from the RFP: "During the term of the Agreement, Supplier shall not, without the prior written consent of US Communities, enter into an agreement or renew an existing agreement with any Multi-State Purchasing Cooperative, other than US Communities, for the purpose of offering Products and Services to Public Agencies through such Multi-State Purchasing Cooperative. A Multi-State Purchasing Cooperative is defined as any purchasing cooperative that administers contracts to Public Agencies in more than five (5) states that are competitively solicited by the purchasing cooperative itself or another Public Agency for the purpose of providing other Public Agencies access to the competitively solicited contracts."?
- A15. Appendix B has been deleted in its entirety and replaced with the attached revised Appendix B.
- Q16. How will US Communities verify that the awardees' sales force compensation is equal or greater under the US communities' contract?
- A16. U.S. Communities will ask Supplier's corporate leadership directly to describe sales force compensation under the U.S. Communities contract compared to standard Supplier sales force compensation. In addition, compensation barriers typically come to light quickly when we interact with the Supplier's sales force.
- Q17. If special pricing, due to a competitive situation, or for significant volume, is offered to a US Communities member, will that pricing become the new contract price?
- A17. No.
- Exception: If a manufacturer extends to Supplier a one-time offer for special pricing, the Supplier is required to price other Participating Public Agencies using the same profit margins or markup.
- Q18. In regard to the requirement to have US Communities logo on Contractor's literature, will a brochure designed to promote the US Communities contract suffice?
- A18. U.S. Communities requires its logo to be on any brochure that is used to market to states, local governments, school districts, higher education institutions, or nonprofit organizations.
- Q19. What is the basis stated in the RFP, for the estimated annual volume of sales for the subsequent contract? What has the performance been over the last five (5) years?
- A19. The estimated annual volume of sales is based on the market size for these types of products. The existing U.S. Communities Homeland Security and Public Safety contract volume averaged \$12 million annually.
- Q20. Will a complete list of current users of the US Communities contract (Homeland Security) be provided?
- A20. Once a Supplier is awarded a contract, that Supplier has access to the U.S. Communities database of information.

- Q21. If a user requires products during an emergency, that need to be added to the contract, what is the process to do so, especially if it is after hours?
- A21. In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. If an emergency occurs at times other than regular County business hours, the using agency head may purchase the required goods or services directly. The agency head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The agency head shall also, not later than the next regular County business day, submit to the County Purchasing Agent a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief explanation of the circumstances of the emergency.
- Q22. If an amendment to the RFP is issued, will US Communities/County of Fairfax grant an extension to the proposal due date of at least seven (7) calendar days?
- A22. It may, only if there is a significant material change to the RFP.
- Q23. Can we represent more than one manufacturer, with different discount schedules, within the same product category?
- A23. Reference RFP section titled "**SUPPLIER QUALIFICATIONS**" NO. 4 **Evaluation of Proposals**, paragraph B. Cost Proposal.
- Q24. Can additional freight costs be charged to the customer for shipments beyond the contiguous 48 states?
- A24. Refer to Paragraph 51 of Appendix C (General Conditions and Instructions to Bidders)
- Q25. Page 55 missing from the RFP document.
- A25. Appendix B is being deleted and replaced in its entirety (Ref. the attachment to this Addendum)
- Q26. Price increases – After the initial 365 day term, are multiple price increases permitted as manufacturer's prices are increased?
- A26. Reference RFP section titled "**FAIRFAX COUNTY SPECIAL PROVISIONS**", Paragraph 5, titled "**PRICING**"
- Q27. If we obtained 'special pricing' from a manufacturer, in reward for our efforts, to aid in securing a piece of business from a state agency, does this mean we are now obligated to provide this pricing to US Communities members?
- A27. No.
- Q28. Is any consideration being given to extend the due date of the proposal?
- A28. The proposal due date has been extended to April 14, 2011 at 2:00 pm EDT.
- Q29. Are additions and deletions permitted and how often.
- A29. See the answer to Q5 and/or paragraph 18 of the Fairfax County Special Provisions titled Changes.

- Q30. While we are looking forward to promoting US Communities, existing contracts are in place and we are bound to the terms of those agreements now and in the future. This is contradictory to Item K in the Supplier Worksheet for National Program Consideration in the Supplier Qualifications sections.
- A30. Supplier is required to lead with U.S. Communities and offer the lowest overall available pricing (net to purchaser) through the contract. Reference the revised attached Appendix B, Administration Agreement 3.3 (a) (vii) and 3.3 (b). Item K is deleted from the Supplier Worksheet for National Program Consideration.
- Q31. Can a minimum order quantity be established?
- A31. Vendors can propose a minimum order quantity.
- Q32. If a US Communities member issues a solicitation and it is responded to, we are unsure as to why the sales be reported under the Master Agreement.
- A32. Reference the attached revised Appendix B, Administration Agreement 3.3 (b) (iii) for Supplier options in responding to other Public Agency solicitations. If Supplier responds to an RFP or ITB with pricing that is higher (net to buyer) than the pricing offered through the Master Agreement, Supplier is not required to report sales under the Master Agreement.
- Q33. Is an award to be made by category or manufacturer?
- A33. Please reference FAIRFAX COUNTY SPECIAL PROVISIONS, Paragraph 13, titled **"BASIS FOR AWARD"**.
- Q34. At what threshold, dollar value or volume driven, can there be deviation on best price terminology?
- A34. There is no threshold for deviating from best price terminology.
- Q35. What is the intent of the \$50M company size threshold? We assume it is to demonstrate capability. We believe our focused business has more value to the contract and more useable capability than a company that is larger and not as focused.
- A35. The intent is to have a Supplier that is fully capable of servicing the varied needs of the 90,000 plus public agencies across the country.
- Q36. Can we partner with another company to achieve the \$50M size standard? Or do we need to?
- A36. A Supplier can partner with another company to achieve the \$50M threshold. If a Supplier does not meet the threshold, Supplier may be disqualified from consideration for a National award. The Supplier would not be disqualified from consideration for a local Fairfax County contract award.
- Q37. On page 11 of the RFP, letter D asks whether sales for the responding company were greater than \$50M last year. Do we have to have had \$50M in sales in order to qualify for this RFP?
- A37. If a Supplier had less than \$50 million in sales last year that Supplier may be disqualified from consideration for a National Contract award. The Supplier would not be disqualified from consideration for a local Fairfax County contract award.
- Q38. Is there a preference for small businesses? If so, do small businesses need to be registered with Virginia's Department of Minority Business Enterprise?
- A38. Fairfax County does not have a requirement for preference to small businesses.

- Q39. On page 81, the RFP requires information about the Virginia BPOL. However, Fairfax, Virginia is not the only locality that would request services under the contract when it is awarded. Do we need licenses to operate in any states or localities other than Fairfax, Virginia in order to conduct work under this contract?
- A39. It would depend upon each jurisdictions law, rule or regulations in regards to doing business in their respective jurisdictions.
- Q40. On page 10 of the RFP in the section Supplier Qualifications, it asks if a responding company had "sales greater than \$50 million last year in the United States". Is this a mandatory requirement for this RFP? Are companies that had less than \$50 million in sales last year eligible to apply?
- A40. If a Supplier had less than \$50 million in sales last year that Supplier may be disqualified from consideration for a National Contract award. The Supplier would not be disqualified from consideration for a local Fairfax County contract award.
- Q41. What is the process for negotiating terms under this contract?
- A41. Clearly identify in your response to the proposal those items and/or terms that your firm would like to negotiate. Ref. Paragraph 13.4 of the Fairfax County Special Provisions.
- Q42. If our pricing under this contract must include shipping charges and assume the risk of FOB Destination, I'm not sure how this can be the lowest price offered to public agencies. Typically when we sell direct, we prepay and add S&H, ship FOB Origin, and don't have a 2% admin fee to pay. Please advise.
- A42. It has to be the lowest pricing for state and local. In addition, refer to paragraph 4.B.6 titled COST PROPOSAL.
- Q43. What is the process for getting approval to pursue or renew other multi-state contracts?
- A43. Supplier is required to lead with U.S. Communities and offer the lowest overall available pricing (net to purchaser) through the contract. Reference the attached revised Appendix B, Administration Agreement 3.3 (a) (vii) and 3.3 (b).
- Q44. Is a GSA schedule included in the category of multi-state contracts?
- A44. No. However, if Supplier has a GSA Schedule 70 or 84 contract, Supplier is required to lead with U.S. Communities and demonstrate the value of the contract to all eligible public agencies.
- Q45. On pg. 57, we're unclear if the use of the word "government" refers to the federal government. Please clarify.
- A45. "Government" does not refer to the federal government.
- Q46. Does the supplier have the option to terminate this contract?
- A46. You can propose a mutual termination in paragraphs 31 – 33 of Appendix C (General Conditions and Instructions to Bidders).
- Q47. Are the terms in Appendix C applicable to all orders resulting from this contract, or do they only apply to this RFP submission?
- A47. These are terms that are specific to Fairfax County doing business within the Commonwealth of Virginia, and may be similar to other participating public agencies.

- Q48. Please define "other promotional material as requested by U.S. Communities" as mentioned on pg. 9
- A48. "Other promotional material as requested by U.S. Communities" refers to any other marketing material which might aid in the marketing of U.S. Communities and Supplier's contract, such as brochures, best practice articles, white papers, etc.
- Q49. Please advise on the process of obtaining a State Corporation Commission number and how to know if one is required.
- A49. Contact the Virginia State Corporation Commission for their requirements; they have a FAQ section that can guide you.
- Q50. What are the requirements for a U.S. Communities dedicated fiscal representative?
- A50. U.S. Communities requires a designated lead referral contact person who would be responsible for receiving communications from U.S. Communities concerning new Participating Public Agency registrations and for ensuring timely follow-up by Supplier's staff to requests for contact from Participating Public Agencies. For additional representative requirements, see page 6, Supplier Qualifications (a) (iv).
- Q51. Are offerors allowed to propose additional categories not already listed in Attachment D, Pricing Sheet?
- A51. Yes.
- Q52. Paragraph 5 PRICING requires that the contract be a firm-fixed price agreement. The proposal also requires that all prices shall be F.O.B. Destination. How should larger, non-standard items be priced?
- A52. All firm-fixed pricing proposed must include charges for shipping "ordinary items". No additional charge of any kind will be allowed for "ordinary items".
- Offerors may propose non-ordinary items with an asterisk (*) denoting that a specific item(s) requires special shipping terms. Detail pricing for large items requiring special shipping, door-delivery, installed, inside delivery, etc., that would not be normally included in the firm-fixed price category, but would require an additional charge due to a "special circumstance". Items not clearly identified shall be considered "ordinary items" and no additional charge shall apply.
- Q53. Under Marketing, page 15, paragraph 5 of the RFP, it is stated "Please submit the resume of the person your company proposes to serve as the National Accounts Manager. Also provide the resume for each person that will be dedicated full time to U.S. Communities account management." Can we just include the job descriptions of the employees, rather than the résumés?
- A53. Yes.