

**PURCHASE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PHOENIX HIGHWAY PRODUCTS, INC.**

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of October 20, 2011, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Phoenix Highway Products, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Mesa, Arizona ("Mesa") entered into Contract No. 2009196, dated December 21, 2010, with the Contractor for the Contractor to provide an ongoing supply of traffic signal uninterruptible power supply ("UPS") units at the unit rates set forth in the Contractor's bid, dated November 17, 2009, and subject to Mesa's standard terms and conditions (collectively, the "Mesa Contract"). The Mesa Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The Town is permitted by Section 3-3-13 of the Town Code to make purchases under the Mesa Contract without further public bidding, and the Mesa Contract permits its cooperative use by other public entities including the Town.

C. The Town desires to purchase nine UPS units and warranty services (the "Materials and Services") from the Contractor under the terms and conditions of the Mesa Contract for a lower cost than would otherwise be available.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until October 20, 2012.

2. Scope of Work. Contractor shall provide the Materials and Services as more particularly set forth in the Mesa Contract, attached hereto as Exhibit A, and at the rates and quantities as set forth in the Contractor's Quotation to the Town ("Quotation"), attached hereto as Exhibit B and incorporated herein by reference, and pursuant to instructions from the Town.

3. Compensation. The Town shall pay the Contractor an aggregate amount not to exceed \$40,390.72 for the Materials and Services at the unit rates as set forth in the Quotation, attached hereto as Exhibit B.

4. Payments. The Town shall pay the Contractor based upon materials delivered and work performed to date, and upon submission and approval of invoices. All invoices shall

document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Conflict of Interest. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

6. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona and Town of Fountain Hills, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

7. Agreement Subject to Appropriation. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Contractor and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the Contractor fully informed as to the availability of funds for the Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Contractor shall be relieved of any subsequent obligation under this Agreement.

8. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among this Agreement, the Quotation and the Mesa Contract, the documents shall govern in the order listed herein.

9. Indemnification; Insurance. The Town shall be afforded all of the rights, privileges and indemnifications afforded to Mesa under the Mesa Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

By: J. A. Ghetti
Julie Ghetti, Interim Town Manager

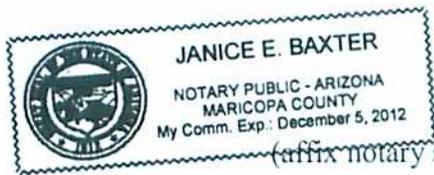
ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on October 24, 2011, by Julie Ghetti, the Interim Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



Janice E. Baxter
Notary Public in and for the State of Arizona

(affix notary seal here)

"Contractor"

PHOENIX HIGHWAY PRODUCTS, INC., an
Arizona corporation

By: _____

Name: _____

Its: _____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

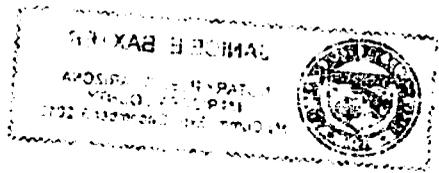
This instrument was acknowledged before me on _____, 2011,
by _____ as _____
of PHOENIX HIGHWAY PRODUCTS, INC., an Arizona corporation, on behalf of the
corporation.

[Handwritten signature]

Notary Public in and for the State of Arizona

(affix notary seal here)

[Handwritten signature]



“Contractor”

PHOENIX HIGHWAY PRODUCTS, INC., an
Arizona corporation

By: Bill R. Weber

Name: BILL R. WEBER

Its: VICE PRES./C.O.O.

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on October 11, 2011,
by Bill R. Weber as representative
of PHOENIX HIGHWAY PRODUCTS, INC., an Arizona corporation, on behalf of the
corporation.

[Signature]
Notary Public in and for the State of Arizona

(affix notary seal here)

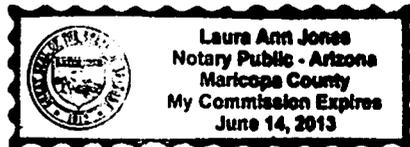


EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PHOENIX HIGHWAY PRODUCTS, INC.

[Mesa Contract]

See following pages.



BILL TO

CITY OF MESA
ATTN: 364 TRAFFIC ENGINEERING
PO BOX 1466
MESA, AZ 85211-1466

TO

PHOENIX HIGHWAY PRODUCTS
2631 N 37TH DRIVE
PHOENIX, AZ 85009-2621

PURCHASE ORDER

RECEIVED

DEC 22 2010

TRANSPORTATION

084031

Order number must appear on all packages, shipping documents, invoices and correspondence. Packing slips must accompany all shipments

Order Number	
105807	
Order Type	LPO/Blanket Order Number
BLANKET (BPO)	
Contract Number	Change Order Number
2009196	

CITY OF MESA TRAFFIC SHOP
EASTSIDE
6935 E DECATUR ST
ATTN: BILL SHINGLETON
MESA, AZ 85207

LINE	QTY/UNIT	DESCRIPTION	UNIT PRICE	EXTENSION
0001	1 EA	Traffic signal uninterruptible power supply units. Term contract includes 5-year extended warranty per unit. Second year of three-year term contract, per specifications of Bid #2009196 and your bid dated 11/17/2009. Second year contract period to be: 1/1/11 through 12/31/11, with one (1) two-year renewal option. Second year contract total not to exceed: \$106,972.75, including applicable taxes. This order cancels previous order #104796. TERMS: NET 30 DAYS SHIP VIA: Best Way FOB: Destination All City of Mesa purchase orders are subject to the Standard Terms and Conditions posted on the City's website: www.mesaaz.gov/purchasing	\$106,972.75	\$106,972.75

Contact: Remy Carreon-Harris
Phone: (480) 644-4187
Email: Remy.Carreon-Harris@mesaaz.gov

Purchasing: (480) 644-2301
Accounts Payable: (480) 644-2355

ADDITIONAL COST	\$0.00
	\$0.00
TOTAL	\$106,972.75

By: 
James R. Harris

Per conversation with Diane Ross on 1/5/2010, Change Order #1 carries over to the renewed BPO. Complete Stand Alone Traffic Signal UPS' per Mesa Specs including warranty are allowed purchases. See pricing on page #11 of this pdf document. Any additional \$ requested will need to go to Council. RCH #16968.



PURCHASE ORDER

Order number must appear on all packages, shipping documents, invoices and correspondence. Packing slips must accompany all shipments.

CITY OF MESA
ATTN: 362 TRANSPORTATION
ADMIN.
PO BOX 1466
MESA, AZ 85211-1466

RECEIVED

JUN 01 2010

Contract Number	104796
Contract Title	BLANKET
Contract Number	2009196

PHOENIX HIGHWAY PRODUCTS
2631 N 37TH DRIVE
PHOENIX, AZ 85009-2621

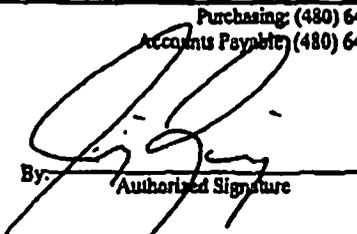
TRANSPORTATION 084051

CITY OF MESA TRAFFIC SHOP
EASTSIDE
6935 E DECATUR ST
ATTN: BILL SHINGLETON
MESA, AZ 85207

DATE: 5/25/2010	DUE/EXPIRATION DATE: 12/31/2010
0001	<p>1 EA Term Contract for Traffic Signal Uninterruptible Power Supply Units Includes 5-year extended warranty per unit</p> <p>First year of 3-year term contract with one two-year renewal option</p> <p>Per specifications of bid #2009196 and your bid dated 11/17/09.</p> <p>First year contract period to be 1/1/10 through 12/31/10</p> <p>First year contract total not to exceed \$106,972.75, including applicable taxes</p> <p>Change Notice 1 to add the following item to the contract: Complete Stand Alone Traffic Signal Uninterruptible Power Supply (UPS) per Mesa Specs Part Number MESAPMUPS Unit Price \$3,975.00 each. Warranty upgrade to 5 years total per unit is \$196.00 per quote and email dated 5/25/2010</p> <p>TERMS: NET 30 DAYS SHIP VIA: Best Way FOB: Destination</p> <p>All City of Mesa purchase orders are subject to the Standard Terms and Conditions posted on the City's website: www.mesaaz.gov/purchasing</p>
	\$106,972.75
	\$106,972.75

Contact: Remy Carreon-Harris
Phone: (480) 644-4187
Email: Remy.Carreon-Harris@mesaaz.gov

Purchasing: (480) 644-2301
Accounts Payable: (480) 644-2355

By: 
Authorized Signature

ADDITIONAL COST	\$0.00
	\$0.00
	\$106,972.75

original

PRICING AND COMPENSATION

Pursuant to all the contract specifications enumerated and described in this solicitation, we agree to furnish Traffic Signal UPS Units to the City of Mesa at the price(s) stated below.

Item No.	Description	Unit Price	Qty	Total Price
1	Complete Turnkey Cabinet Mounted Traffic Signal Uninterruptible Power Supply (UPS) Manufacturer: <u>Magnum Alpha</u> Model: <u>MAG ALPHA PB</u>	\$ 3,770 ⁰⁰	25 each	\$ 94,250 ⁰⁰

OPTIONAL PRICING FOR THESE SPARE COMPONENTS AND SERVICES IF OFFERED:

Item No.	Description	Qty	Total Price
2	1100W Rack Mounted FXM1100 Inverter (spare replacement part less cabinet & batteries etc.)	1 each	\$ 891. ⁰⁰
3	Rack mounted Automatic Transfer Switch/Generator Transfer Switch assembly with dry contacts	1 each	\$ 517. ⁰⁰
4	Battery per the specification	1 each	\$ 172. ⁰⁰
5	Battery manager	1 each	\$ 98. ⁰⁰
6	Flat rate FXM1100 Inverter repair for out-of-warranty units	1 each	\$ 450. ⁰⁰
7	Warranty upgrade to five (5) years total, per unit	1 each	\$ 196. ⁰⁰

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices.

FOB: Destination

Freight Costs: Unit prices should include all Shipping and Transportation Costs

No fuel surcharges will be accepted.

Delivery shall be made to the location(s) contained herein no longer than 45 days after receipt of an order.

Specify number of days for normal delivery 30-45 DAYS ARO

Payment terms (not less than net 30 days): NET 30 DAYS

Does Bidder agree to honor the prices, terms and conditions to other agencies as specified in section S.257

Yes No (A "no" answer will not disqualify your bid.)

Vendor Name Phoenix Highway Products, Inc Date: 11/17/09

EXCEPTIONS, CONFIDENTIAL & ADDITIONAL MATERIALS

Bidders shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document.

Exceptions (mark one):

- No exceptions
 Exceptions taken (describe—attach additional pages if needed)

Confidential/Proprietary Submittals (mark one):

- No confidential/proprietary materials have been included with this bid
 Confidential/Proprietary materials included. Bidders should identify below any portion of their bid deemed confidential or proprietary (see Standard Terms and Conditions, section S.25). Identification in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Offeror and the City prior to any public disclosure. Requests to deem the entire bid as confidential will not be considered.

Additional Materials submitted (mark one):

- No additional materials have been included with this bid
 Additional Materials attached (describe—attach additional pages if needed)

Manufacturer Catalog Cut Sheets.

Vendor Name Phoenix Highway Products, Inc. Date: 11/19/09

CONTRACT FORM AND SIGNATURES

By signing and submitting this Bid, the Vendor certifies that:

- a) It is under no legal prohibition on contracting with the City of Mesa.
- b) It has no known, undisclosed conflicts of interest.
- c) It has read, understands, and is in compliance with the specifications, terms and conditions stated herein, as well as its attachments, and any referenced documents.
- d) The prices offered were independently developed without consultation or collusion with any of the other Respondents or potential Respondents or any other anti-competitive practices.
- e) It grants the City of Mesa permission to copy all parts of this Response, including without limitation any documents and/or materials copyrighted by the Respondent, for Mesa's internal use in evaluating Respondent's Proposal, or in response to a public records request under Arizona's public records law (A.R.S. §39-121 et. seq.) or other applicable law, subpoena, or other judicial process; provided that Mesa agrees not to change or delete any copyright or proprietary notices.
- f) Under the provisions of A.R.S. §41-4401, Respondent hereby warrants to the City that the Respondent and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- g) Under the provisions of A.R.S. §35-392, Respondent certifies that they are not in violation of section 6(j) of the Federal Export Administration Act.
- h) Under the provision of A.R.S. §35-391 and §35-393, Respondent certifies that they do not have Scrutinized Business Operations in Sudan or Iran.
- i) No offer of gifts, payments or other consideration were made to any City employee, officer, elected official, or consultant who has or may have had a role in the procurement process for the services and or goods/materials covered by this contract.
- j) It will provide the materials or services specified in compliance with all Federal, State, and Local Statutes and Rules if awarded by the City.
- k) It is current in all tax obligations due to the City.
- l) The signatory is an officer or duly authorized agent of the Respondent with full power and authority to submit binding offers for the goods or services as specified herein.
- m) It will accept such terms and conditions in a resulting contract if awarded by the City.

ACCEPTED AND AGREED TO:

Company Name: Phoenix Highway Products, Inc.
Signature: Bill R. Weber
Printed Name: Bill R. Weber
Title: Director of Operations
Date: 11/17/09

ACCEPTANCE OF OFFER:

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number 2009196.

Awarded this ____ day of _____, 200__

Edward Quedans, CPM
As Business Services Director

VENDOR INFORMATION

Company Legal/Corporate Name: Phoenix Highway Products, Inc.

Doing Business As (if different than above): _____

Address: 2631 N. 37th Drive

City: Phoenix State: AZ Zip: 85029

Phone: (602) 344-7770 Fax: (602) 344-7771

E-Mail Address: debbie@phoenixhighwayproducts.com Website: www.phoenixhighwayproducts.com

Taxpayer Identification Number: 96-0883565

Remit to Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____

Contact for Questions about this bid:

Name: Debra Lesan Fax: (602) 344-7771

Phone: (602) 344-7770 E-Mail Address: debbie@phoenixhighwayproducts.com

Day-to-Day Project Contact (if awarded):

Name: SAME AS ABOVE Fax: _____

Phone: _____ E-Mail Address: _____

Sales/Use Tax Information (check one):

Bidder is located outside Arizona and does NOT collect Arizona State Sales/Use Tax (The City will pay use tax directly to the AZ Dept of Revenue)

Bidder is located outside Arizona is authorized to collect Arizona Sales/Use Taxes (The Bidder should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: _____
City Sales Tax Number: _____ City of: _____, AZ
Sales Tax Rate: _____

Bidder is located in Arizona (The Bidder should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: 07553182-F
City Sales Tax Number: 97008039 City of: Phoenix, AZ
Sales Tax Rate: 8.3%

Certified Small Business Certifying Agency: _____

Certified Minority, Women or Disadvantaged Business Enterprise Certifying Agency: _____

MESA STANDARD TERMS AND CONDITIONS

- S.1 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City shall be that of an independent contractor.
- S.2 **SUBCONTRACTING.** Contractor may not subcontract work without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement shall comply with its provisions. Further, all agreements between Contractor and its subcontractors shall provide that the terms and conditions of this Agreement be incorporated therein.
- S.3 **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent shall be null and void and in such event the City shall have the right at its option to terminate the Agreement. No granting of consent to any assignment shall relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.4 **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.5 **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or shall create, any benefits, rights, or responsibilities in any third parties.
- S.6 **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the Materials or Services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
- S.7 **AMENDMENTS.** There shall be no oral changes to this Agreement. This Agreement shall only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.8 **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
- S.9 **COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future Federal, State and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and shall comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor Personnel to achieve compliance prior to the Effective Date. Upon request, Contractor shall demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor shall require a drug-free workplace for all Contractor Personnel working under this Agreement. Specifically, all Contractor Personnel who are working under this Agreement shall be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor Personnel and shall ensure that Contractor Personnel do not use or possess illegal drugs while in the course of performing their duties.
 - c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City or its agents to inspect applicable personnel records to verify such compliance. Contractor shall ensure and keep appropriate records to demonstrate that all Contractor Personnel have a legal right to live and work in the United States.

MESA STANDARD TERMS AND CONDITIONS

- (i) Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the right to inspect the papers of all Contractor Personnel who provides Services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable Federal, State and local laws and executive orders regarding employment. Contractor and Contractor Personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. §35-392, the Contractor shall not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods of services to the City.
- f. **No Scrutinized Business Operations in Sudan or Iran.** Contractor shall be in compliance with A.R.S. §§ 35-391 and 35-393 which prohibit Contractor from having scrutinized business operations in Sudan or Iran.

S.10 **SALES/USE TAX, OTHER TAXES.**

- a. Contractor shall be responsible for payment of all taxes including Federal, State, and local taxes related to or arising out of Contractor's Services under this Agreement, including by way of illustration but not limitation, Federal and State income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.
- b. The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request. The City is not exempt from State and local sales/use taxes.

S.11 **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of Services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

S.12 **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process.

MESA STANDARD TERMS AND CONDITIONS

- S.13 **AUDITS AND RECORDS.** Contractor shall preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor shall permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
- S.14 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor Personnel who would perform Services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately.
- S.15 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City shall have final authority, based on security reasons: (i) to determine when security clearance of Contractor Personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor Personnel; and (iii) to determine whether or not any individual or entity may provide Services under this Agreement. If the City objects to any Contractor Personnel for any reasonable cause, then Contractor shall, upon notice from the City, remove any such individual from performance of Services.
- S.16 **DEFAULT.**
- a. A party shall be in default if that party:
 - (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - (ii) Is the subject of a petition for involuntary bankruptcy not removed within 60 Days;
 - (iii) Conducts business in an unethical or illegal manner; or
 - (iv) Fails to carry out any term, promise, or condition of the Agreement.
 - b. Whenever the City in good faith has reason to question Contractor's intent to perform, the former party may demand that the other party give a written assurance of its intent to perform. In the event that the demand is made and no written assurance is given within 5 Days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- S.17 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy shall not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination shall be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by (i) requiring immediate reimbursement to the City (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security; if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including but not limited to administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party shall have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party shall be liable for incidental, special, or consequential damages.

MESA STANDARD TERMS AND CONDITIONS

- S.18 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- S.19 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) Days written notice.
- S.20 **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within 3 years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.21 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City shall have the right to terminate the Agreement without penalty on the last Day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate 30 Days prior to the stated termination date.
- S.22 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor shall be entitled only to payment for those Services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City shall make final payment within thirty (30) Days after the City has both completed its appraisal of the Materials and Services provided and received Contractor's properly prepared invoice.
- S.23 **NON-WAIVER OF RIGHTS.** There shall be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any Services hereunder, shall not release the other party of any of the warranties or other obligations of the Agreement and shall not be deemed a waiver of any such rights or remedies.
- S.24 **INDEMNIFICATION/LIABILITY.**
- a. **Indemnification, General.** To the fullest extent permitted by Law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the Services provided by Contractor Personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor Personnel; and (iii) Contractor or Contractor Personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor shall update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and shall not indemnify or hold Contractor or any third-party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
- S.25 **WARRANTY.** Contractor warrants that all Services will be performed in a good, workman-like and professional manner. If any Materials or Services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide Materials or redo such Services until in accordance with this Agreement and to the City's reasonable satisfaction.

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Unless otherwise agreed, the Contractor warrants that Materials shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and shall perform in accordance with manufacturer's published specifications.

- S.26 **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor shall do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and shall at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.27 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of Materials or Services or any Materials or Services at all under this Agreement and acknowledges and agrees that the Materials or Services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but shall not bind it to purchase, accept, or pay for Materials or Services which exceed its actual needs.
- S.28 **OWNERSHIP.** All deliverables, Services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and shall not be used or released by Contractor or any other person except with prior written permission by the City.
- S.29 **USE OF NAME.** Contractor shall not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
- S.30 **CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
- S.31 **FOB POINT & RISK OF LOSS.** All deliveries shall be FOB destination unless otherwise agreed. Freight charged/terms shall be as agreed.
- S.32 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these Services and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
- S.33 **SAFEGUARDING CITY PROPERTY.** The Contractor will be responsible for any damage to City Real property or damage or loss of City Personal Property when such property is the responsibility of or in the custody of the Contractor or its employees.
- S.34 **WARRANTY OF RIGHTS.** The Contractor warrants it has title to, or the right to allow the City to use, the Materials and Services being provided and that the City may use same without suit, trouble or hindrance from the Contractor or third parties.
- S.35 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor shall, without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the City's use or operation of the items provided by Contractor

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hereunder or any part thereof by reason of any alleged infringement, Contractor shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the City the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than 5 years, and plus any additional costs the City may incur to acquire substitute supplies or services.

- S.36 **CONTRACT ADMINISTRATION.** The contract shall be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract shall be referred to an administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrator(s).
- S.37 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected shall within 5 Days notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected shall also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances shall delays caused by a force majeure extend beyond one hundred-twenty (120) Days from the scheduled delivery or completion date of a task.
- S.38 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The district shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by others.

- S.39 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.40 **NOTICES.** All notices to be given pursuant to this Agreement shall be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or sent via facsimile. If provided by personal delivery, receipt shall be deemed effective upon delivery. If sent via certified or

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registered mail, receipt shall be deemed effective 3 Days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt shall be deemed effective 2 Days after the sending thereof.

- S.41 **GOVERNING LAW, FORUM.** This Agreement shall be governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.
- S.42 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, shall supersede all prior oral or written agreements, if any, between the parties, and shall constitute the entire agreement between the parties with respect to the work to be performed.
- S.43 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.44 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.45 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, shall survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, Termination, or other expiration of this Agreement shall not release any party from any liability or obligation arising prior to the date of termination.

**EXHIBIT B
TO
PURCHASE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PHOENIX HIGHWAY PRODUCTS, INC.**

[Quotation]

See following pages.

Phoenix Highway Products, Inc.
 2631 N. 37th Dr.
 Phoenix, AZ 85009



Phone: 602-344-7770
 Fax: 602-344-7771

Number **PHPQ3207**
 Date **Sep 22, 2011**

For: Piggy Back UPS	Customer: Town of Fountain Hills 16705 E Ave of the Fountain Fountain Hills, AZ 85268 Jim Michalak (480) 816-5154
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Prepared by Tom McGovern 602-684-8040	Contact Tom McGovern 602-684-8040	Delivery 60-95 Days ARO	Freight Prepaid	Terms Net 30 Days
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All prices quoted are valid for sixty (60) days unless otherwise noted

Qty.	Part Number	Description	Unit Price	Ext. Price
9	PHP PB ENCLOSURE	Piggy Back UPS per Mesa Specs	\$3,770.00	\$33,930.00
9	EW3-OUTD-UN-2KVA	3 Year Extended Warranty	\$196.00	\$1,764.00
9	PAINT	Paint Adtler	\$140.00	\$1,260.00
MESA CONTRACT # 2009196				
			SubTotal	\$36,954.00
			Tax	\$3,436.72
			Total	\$40,390.72

Additional Notes -
 IF THIS QUOTE REQUEST HAS TIES TO ARRA, BUY AMERICA, OR BUY AMERICAN REQUIREMENTS, THEY MUST BE SPECIFIED PRIOR TO PLACEMENT OF THE ORDER.