

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
BERGE FORD INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of June 5, 2018, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Berge Ford Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Mesa, Arizona ("City") entered into Contract # 2018086, effective March 19th, 2018, (the "City Contract"), attached as Exhibit 1, with the Contractor for the purchase of 2017 or newer light duty half ton pickup trucks.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the City Contract, at its discretion and with the agreement of the awarded Contractor, and the City Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the City Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with 2017 or newer light duty half ton pickup trucks, as more particularly set forth in Section 2 below (the "Goods") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Goods.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and 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 Town and the Contractor 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 June 5, 2019. The Agreement may be terminated prior to its termination date as otherwise provided in this Agreement or the City Contract.

2. Goods. This Agreement is for the purchase of two light duty half ton pickup trucks, each as described in the Quote, attached hereto as Exhibit 2. Changes to the Goods must be agreed upon by the parties in a written change order ("Change Order"). Each Change Order approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement

and the City Contract and (ii) be attached hereto as Exhibit 3 and incorporated herein by reference. Change Orders submitted without referencing this Agreement and the City Contract will be subject to rejection.

2.1 Inspection; Acceptance. All Goods are subject to final inspection and acceptance by the Town. Upon discovery of non-conforming Goods, the Town may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Service into compliance and withhold the cost of same from any payments due to the Contractor.

3. Compensation. The Town shall pay Contractor an amount not to exceed \$23,201.17 per each 2017 or newer light duty half ton pickup truck. The maximum amount of compensation authorized by this Agreement is \$46,402.34 in the event that the Town purchases two trucks.

4. Payments. The Town shall pay the Contractor based upon acceptance and delivery of Goods, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the City Contract and (ii) document and itemize all goods provided. Contractor's invoices shall not exceed the amount set forth in the Quote and City Contract. The invoice statement shall include a record of materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the City Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws

and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

9. Applicable Law; Venue. 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 Maricopa County, Arizona.

10. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any Town-approved work orders, the City Contract and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the City Contract (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town of any work order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the City Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Rights and Privileges. To the extent provided under the City Contract, the Town

shall be afforded all of the rights and privileges afforded to City and shall be “City” (as defined in the City Contract) for the purposes of the portions of the City Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to City to the extent provided under the City Contract, and such insurance coverage and indemnifications shall inure 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. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from, and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Grady E. Miller, Town Manager

With copy to: Town Attorney
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Attn: Town Attorney

If to Contractor: Berge Ford Inc.
 460 East Auto Center Drive
 Mesa, Arizona 85204
 Attn: Scott Dietrich

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of

a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES ON FOLLOWING PAGES]

“Contractor”

BERGE FORD INC.

By: Theresa Worthen

Name: Theresa Worthen

Its: Gov't. Fleet Sales

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On 6/14, 2018, before me personally appeared Theresa Worthen the Gov't. Fleet Sales of Berge Ford Inc., an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of Berge Ford Inc.



(Affix notary seal here)

[Signature]
Notary Public

EXHIBIT 1
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
BERGE FORD INC.

[CITY CONTRACT]

See following pages.



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2018086
2017 OR NEWER LIGHT DUTY HALF TON PICKUP TRUCKS**

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400 Mesa, AZ 85201
Attention	Darryl Woodson, CPPB Senior Procurement Officer
E-Mail	Darryl.Woodson@MesaAZ.gov
Telephone	(480) 644-3261
Facsimile	(480) 644-2655

AND

Berge Ford, ("Contractor")

Mailing Address	460 E Auto Center Drive Mesa, AZ 85204
Delivery Address	
Attention	Theresa Worthen, Government Fleet Sales
E-Mail	tworthen@bergefords.com
Telephone	480-497-7544
Facsimile	

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 19th day of March, 2018, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Berge Ford, a(n) State corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2018086** ("Solicitation") for **2017 OR NEWER LIGHT DUTY HALF TON PICKUP TRUCKS**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on March 20, 2018 and ending on March 19, 2019. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery**. Delivery shall be made to the location(s) contained in the Detailed Specifications within 200 days after receipt of an order.
2. **Detailed Specifications**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Detailed Specifications") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Detailed Specifications unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Detailed Specifications. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Detailed Specifications.
3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.

- a. Agreement
- b. Exhibits
 1. Mesa Standard Terms & Conditions
 2. Detailed Specifications/Technical Specifications
 3. Other Exhibits not listed above
- c. Solicitation including any addenda
- d. Contractor Response

5. **Payment.**

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B ("Pricing")** in consideration of Contractor's performance of the Detailed Specifications during the Term.

5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

5.3 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this Section 5.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

Sixty (60) days prior to the initial one (1) year contract effective date, the Bidder may submit a written request that the City increase the prices in the amount no more than the twelve (12) month change in the **Producer Price Index for 336110**, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/ppi/home.htm>).

The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld. Renewal prices for the second contract year shall be firm for a minimum of a one hundred eighty (180) days.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation

demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.5 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes; and
- j. Total amount due.

5.6 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise, payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

5.7 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance.**

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.

- 6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
 - 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
 - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - 6.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
 - 6.9.4 Owners & Contractors Protective Liability Coverage (OCP)
 - 6.9.5 Garage Liability – Occurrence Form
7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.

9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Detailed Specifications / Technical Specifications
 - (B) Pricing
 - (C) Mesa Standard Terms and Conditions
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

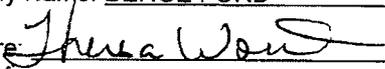
RESPONDENT CERTIFICATION

By submitting the Response and signing this Certification, the Respondent understands and certifies to all of the following:

- a) The information provided in Respondent's Response is true and accurate to the best of Respondent's knowledge.
- b) Respondent is under no legal prohibition that would prevent Respondent from contracting with the City of Mesa.
- c) Respondent has read and understands the Solicitation packet as a whole (including attachments, exhibits, and referenced documents) and: (i) can attest that Respondent is in compliance with the requirements of the Solicitation packet; and (ii) is capable of fully carrying out the requirements of the Solicitation as set forth in Respondent's Response.
- d) To Respondent's knowledge, Respondent and Respondent's employees have no known, undisclosed conflicts of interest as defined by applicable law or City of Mesa Procurement Rules. If Respondent or Respondent employees have a known conflict of interest, Respondent has disclosed the conflict in its Response.
- e) Respondent did not engage in any anti-competitive practices related to its Response or the Solicitation. The prices offered by Respondent were independently developed without consultation or collusion with any other Respondents or potential Respondents.
- f) No gifts, payments or other consideration were made to any City employee, officer, elected official, agent, or consultant who has or may have a role in the procurement process for the services/materials covered by the Solicitation.
- g) Respondent grants the City of Mesa permission to copy all parts of its Response including, without limitation, any documents and materials copyrighted by Respondent: (i) for the City's use in evaluating the Response; and (ii) to be disclosed 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 such disclosure is in accordance with City of Mesa Procurement Rule 6.13.
- h) If a contract is awarded to Respondent as a result of the Response submitted to the Solicitation Respondent will:
 - i. Provide the materials or services specified in the Response in compliance with all applicable federal, state, and local statutes, rules and policies;
 - ii. Honor all elements of the Response submitted by Respondent to the City including, but not limited to, the price and the materials/services to be provided; and
 - iii. Enter into an agreement with the City based on the terms and conditions of the Solicitation and the Response, subject to any negotiated exceptions and terms.
- i) Respondent is current in all obligations due to the City including any amounts owed the City and any licenses/permits required for the general lawful conduct of business. Respondent shall acquire all licenses/permits necessary to lawfully conduct business specific to the Solicitation prior to the execution of a contract with the City pertaining to the Solicitation.
- j) The signatory of this Certification is an officer or duly authorized agent of Respondent with full power and authority to submit binding offers for the goods/services specified herein. Respondent intends by the submission of this Certification to be bound by the terms of the Certification, Solicitation, and Response, subject to any negotiated terms/exceptions.

ACCEPTED AND AGREED TO BY RESPONDENT:

Company Name: BERGE FORD

Signature: 

Printed Name: THERESA WORTHEN

Title: GOVERNMENT FLEET SALES

Date: 11/28/17

City Acceptance of Offer

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 2018086.

Awarded this 19th day of March, 2018.



Digitally signed by Edward Quedens
Location: City of Mesa Business
Services
Date: 2018.04.10 11:03:28 -07'00'

Edward Quedens, CPPO, C.P.M.
As Business Services Director

REVIEWED BY:

By: DJW

EXHIBIT A
DETAILED SPECIFICATIONS

1. **INTENT:** The City of Mesa Fleet Services Department is seeking to award a firm, fixed price purchasing contract with a vendor to provide 2017 or newer light duty half ton pickup trucks.
2. **MINIMUM QUALIFICATIONS:** All Bidders must be licensed to sell and deliver vehicles and equipment in the State of Arizona.
3. **DEVIATION FROM SPECIFICATIONS:** No significant or material deviation from the terms of this specification is acceptable.
4. **DELIVERY:** Delivery shall be made to the location(s) contained herein within two hundred (200) days after receipt of an order or as quoted in the bid response.

Ship to: City of Mesa Fleet Services Department
310 W. 6th Street
Mesa, AZ 85201

5. **TERM:** This Request for Bid is for awarding a firm, fixed price purchasing contract to cover a one (1) year term with the provision to extend for up to an additional twenty-four (24) months.
6. **ADDITIONAL PURCHASES:** The City reserves the right to purchase additional light duty half ton pickup trucks after the bid award date.

Orders placed after initial bid pricing expiration date shall be priced in accordance with instructions in the Detailed Specifications.

7. **EXTENSIONS:** Upon the expiration of the Term of the Agreement, including any renewals permitted herein, at the City's sole discretion the Agreement may be extended for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials under this Agreement. The City intends to notify the Contractor in writing of its desire to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

8. **PRICING:**

- a. **Prices.** All pricing for the initial term shall be firm for a minimum of one-hundred eighty (180) days except where otherwise provided by the specifications, and include all transportation, insurance and warranty costs. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

- b. **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

Sixty (60) days prior to the initial one (1) year contract effective date, the Bidder may submit

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a written request that the City increase the prices in the amount no more than the twelve (12) month change in the Producer Price Index for 336110, light truck and utility vehicle manufacturer, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/ppi/home.htm>).

The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld. Renewal prices for the second contract year shall be firm for a minimum of a one hundred eighty (180) days.

- c. **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 6, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

9. **TYPES AND AMOUNTS OF INSURANCE.** Insurance requirements are detailed in the Agreement document. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

- a. Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
- b. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
- c. Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.

Prior to the execution of the Contract, the Contractor shall provide the City with a Certificate of Insurance (using appropriate ACORD certificate) SIGNED by the Issuer, applicable endorsements, and the City reserves the right to request additional copies of any or all of the above policies, endorsements, or notices relating thereto.

When the City requires a Certificate of Insurance to be furnished, the Contractor's insurance shall be primary of all other sources available. When the City is a certificate holder, the Contractor agrees that no policy shall expire, be canceled or materially changed to affect the coverage available without advance written notice to the City.

"Waiver of Subrogation". The policies required by this agreement (or contract) shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, elected officials, officers, employees, and volunteers for any claims arising out of the work of Contractor."

All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

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10. **SHIPPING TERMS.** Bid prices shall be F.O.B. destination, Fleet Services Division, 310 E 6th Street, Mesa Arizona 85211-1466. Bidder shall retain title and control of all goods until they are delivered and acceptance has been made. All risks of transportation and related charges shall be the responsibility of the Bidder. The Bidder shall file all claims for visible or concealed damage. Fleet Services will notify the Bidder promptly of any damaged goods and assist the Bidder in arranging for inspection.
11. **DELIVERY/INVOICING.** Bidders shall deliver the equipment within the time frame bid. The Bidder shall be responsible for delivery of all equipment in a complete and ready-for-use condition with all components functioning, cleaned, tested, lubricated, and serviced. Equipment delivered shall be free of decals or emblems identifying or advertising the Bidder. Safety decals or the standard identification of a manufacturer is acceptable.

The Bidder shall be responsible for ensuring the delivery performance of subcontractors.

Delivery shall be between the hours of 8:00 a.m. and 12:00 noon or 2:00 p.m. and 4:00 p.m., Monday through Friday (excluding holidays), to the Fleet Services Facility, 310 E 6th Street, Mesa Arizona 85211-1466. The vehicle(s) shall be prepared for immediate use including not less than one quarter (1/4) tank of fuel. Vehicles delivered with less than 1/4 tank of fuel will be refused.

Documents to be presented at the time of delivery shall include the following:

- One (1) Title/registration application for each unit delivered.
- One (1) Manufacturer's window sticker with price and option information. **Do not leave the sticker on the vehicle door glass.**
- One (1) Dealer's invoice with a typed VIN, purchase order number, and dealer's stock number.
- One (1) Manufacturer's "Statement of Origin" for each unit delivered with a typed assignment as follows:

City of Mesa
Fleet Services Department
P.O. Box 1466
Mesa, AZ 85211-1466

Documents to be delivered PRIOR TO DELIVERY OF THE LAST UNIT (Delivery shall not be considered complete until the City is in receipt of the manuals) shall include:

- If the vehicle is equipped with auxiliary equipment, two (2) sets each of the parts books, service manuals, and video (if available) shall be furnished with each system.

The manuals and schematics supplied shall provide complete and comprehensive information on all equipment, equipment components, and accessories as supplied to comply with this Specification. If changes, modifications, additions, or alterations of any kind are made on the equipment, the Bidder shall provide blueprints, line drawings, and descriptive text sufficient to allow one of average skill in general mechanics to diagnose, repair, and maintain the equipment and all components.

On equipment assembled from manufactured components, the parts manuals shall show the manufacturer of each part and all cross-referencing between the Bidder and manufacturer.

The City of Mesa shall have the right to reproduce any material for City of Mesa educational purposes only.

All books and manuals shall be delivered to the City of Mesa prior to delivery of the last unit. Delivery shall not be considered complete until the City of Mesa is in receipt of all books and manuals.

EXHIBIT A
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12. **ACCEPTANCE.** Each item delivered shall be subject to a complete inspection by Fleet Services prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to Specification, mechanical integrity, quality, workmanship, and materials. Thirty-(30) calendar days shall be allowed for this process. If a problem or discrepancy is found, the dealer shall retrieve the vehicle within two (2) business days of notification for correction/repairs and redeliver said vehicle as soon as the repairs are complete.

Certified weight slip shall be presented for any unit that has had body modifications or body mounted to chassis, etc. The weight slip must reflect the tare weight and **fully loaded weight.** Fleet Services will reject any vehicle that does not meet advertised capacity and/or will not legally load (GVWR) to specification.

13. **ACCEPTANCE TESTING.** Upon and after delivery, the City shall fully test each vehicle for thirty (30) days in order to determine final acceptance. Such tests shall allow the City of completely and accurately assess whether each vehicle, including all parts, equipment, materials, and functions, meets the requirements set forth in the contract documents.

The City reserves the right to test each function more than once during this thirty (30) day acceptance testing period. If the City determines or finds a problem or failure with all or any part of a vehicle, the contractor shall be obligated to replace, correct, or fix any problem or failure.

14. **FINAL ACCEPTANCE/ TESTING.** Final acceptance shall be evidenced by the City's written certification to Bidder that all vehicles, parts and components have been successfully delivered and installed by the Bidder, are operational and inspected and accepted by the City. The acceptance of such items shall be based on the items meeting, to the satisfaction of the City, the acceptance standards set forth in the contract document.

The items provided under this contract document shall meet all of the following standards:

- (i) All components shall be in good working order and operational upon Final Acceptance.
- (ii) All components shall be supplied from Bidder.
- (iii) All model and/or parts shall consist of the highest quality materials.
- (iv) All components shall be in good, undamaged condition.

The vehicle(s), to pass the final acceptance test, must operate free from defects during the test. "Free From Defects" means that the vehicle(s) operates in accordance with requirements set forth in, or delivered pursuant to, the specification.

15. **CERTIFICATION OF FINAL ACCEPTANCE.** The vehicle(s) shall require a certification of Final Acceptance. Such certification shall evidence that the Contractor has completed the vehicle(s) in accordance with the specification and the vehicle(s) have been inspected, tested and accepted by the City. The date certification of Final Acceptance is executed by the City shall be the Final Acceptance Date. All Warranty Periods shall begin upon the Final Acceptance Date.

16. **CHANGE ORDERS.** No changes shall be made pursuant to the specification without a properly executed change order. Changes in the vehicle specifications, delivery schedule or vehicle parts may be made pursuant to a written change order signed by Peter Scarafioti, Automotive Engineer. The Automotive Engineer must sign any change order which modifies the total contract price. No changes shall be made to the vehicle(s) or parts without a properly executed change order.

17. **INSPECTION, TESTING AND REJECTION.**
All items, including, without limitation, vehicles, parts, materials, and components shall be subject to inspection and testing by the City upon delivery.
If any items are defective in material or workmanship or otherwise not in conformity with the requirements of this specification, the City shall have the right to require their correction or to require replacement. Items that have been rejected or required to be corrected shall be removed or, if permitted by the City, corrected in place by and at the expense of Bidder promptly after notice.

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Such items shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Bidder fails to remove promptly such items required to be removed, or to replace or correct promptly such items required to be removed, replaced, or corrected, Bidder shall be in default under this specification. In addition to, and not in lieu of, any rights that the City may have under this Contract Document or otherwise as a result of such default, the City, at its sole discretion, may either:

- (i). Accept delivery of the defective items and charge Bidder costs incurred or deduct from amounts due Bidder the costs incurred by the City for such correction; or
- (ii) Charge Bidder the total cost incurred by the City; or
- (iii) Require the delivery of such items at a reduction in price that is equitable under the circumstances.

All inspections and tests by the City shall be performed in such a manner as not to unduly delay the final acceptance of the vehicle(s). With respect to rejected items, the City shall not be liable for any reduction in value of such rejected items used in connection with such inspection or test. Failure to inspect or reject items shall not relieve Bidder of responsibility for items that are not in accordance with the requirements of this contract document, nor impose any liability on the City for any reason. Inspection and testing of any item does not relieve Bidder from any responsibility regarding defects that may be discovered prior to Final Acceptance or during all warranty periods.

18. **TRANSPORT.** The Bidder shall be fully responsible for the transport of the equipment to and from Fleet Services, 310 E 6th Street, Mesa Arizona 85211-1466 for installation and correction of items or workmanship not in compliance with the specification. The Bidder shall be responsible for any loss of or damage to City of Mesa property while such property is in Bidder's possession and/or subject to Bidder's control.
19. **CANCELLATION.** Failure to provide materials, supplies, or instruments in accordance with specifications or failure to meet stated delivery commitments may be cause for *immediate* cancellation of the contract.
20. **WARRANTY.**
- A. All equipment purchased on this bid shall be purchased from one (1) Bidder. That one Bidder shall be fully responsible for all warranty performance relating to any part or component of the purchased equipment regardless of who installed the component.
 - B. The Bidder's responsibility shall include all warranty involving a Sub Contractor.
 - C. The Bidder shall supply a minimum 36-month warranty on all parts and workmanship on chassis and vocational body and equipment, from the initial in-service date as reported by the Fleet Services Division. The Contractor shall further guarantee the vehicle / equipment supplied complies with all applicable State/Federal laws and regulations in effect at the time of delivery.
 - D. The Bidder shall state in writing any additional duration of their warranty that goes above and beyond the minimum requested warranty stated in C above. This shall include any applicable limitations or conditions.
 - E. Any Bidder that wishes to bid on vehicles/equipment for the City of Mesa must have an *authorized* warranty dealer who can perform warranty repairs within a 50-mile radius of Fleet Services, 310 E 6th Street, Mesa Arizona 85211-1466. If no authorized dealer is available and Fleet Services *chooses* to purchase said equipment, Fleet Services may perform the warranty repairs during the term of warranty agreement.
21. **DESCRIPTIVE LITERATURE.** All bidders must submit complete manufacturers' descriptive literature regarding the equipment they propose to furnish. The literature shall be sufficient in detail in order to allow a full and fair evaluation of the bid submitted. *Failure to include this information may result in the bid being rejected.*

EXHIBIT A **DETAILED SPECIFICATIONS**

All modifications made to the standard production unit described in the manufacturer's brochures must be certified by the manufacturer and submitted with the bid, or the bid will be deemed "non-responsive" and rejected without further review.

22. **BRAND NAMES OR EQUAL.** The brand name or equal specification used in this solicitation is for the *purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition.* Any offer that proposes equal quality, design, or performance will be considered if the product offered is identified in the bid (including sufficient technical information) and determined by Fleet Services to be equal in all material respects to the brand name product referenced in the bid. Decisions of functional equivalency will be at the sole interpretation and discretion of the City of Mesa. A blanket statement that equipment proposed will meet all requirements will not be sufficient to establish equivalence.
23. **DEMONSTRATOR UNITS.** Bidder must be prepared to supply a demonstrator unit for the City of Mesa to evaluate. The demonstrator unit must be available within fourteen (14) calendar days of notification and must be available for an on-site, hands-on evaluation for a minimum of one 10-hour shift. The demonstrator unit must meet these specifications. Inability to provide a demonstrator or acceptable alternative may be grounds for rejecting the vendors' bid.
24. **NEW EQUIPMENT.** All equipment supplied pursuant to this Specification *shall be new*, unused, current production models equipped as described in the manufacturer's published literature and specification sheets. Demo units may be *considered* if the unit has never been licensed and unit meets the technical specification. The bidder on the submittals shall note any variation between the equipment bid and OEM literature and specification sheets. The equipment specified herein shall be equipped with those items normally supplied in the stream of commerce. Any item(s) not specifically mentioned shall not be interpreted as not requested. Specifications are intended to set minimum levels of quality and/or suitability.
25. **IDENTICAL UNITS.** When equipment is purchased in quantities greater than one, each unit shall be identical in all aspects of design and manufacture unless specifically stated in the technical portion of the specification.
26. **PARTS AVAILABILITY.** Since the continuous operation of the City of Mesa's equipment is important and sometimes of an emergency nature, the successful bidder must be in a position to render prompt parts support. The availability of normal wear items (filters, belts, hoses, and cutting edges) shall not exceed one (1) working day. The parts inventory shall be of sufficient size and variety to offer a level of availability of 95% of all parts within two (2) working days after the date of City of Mesa order. The successful bidder shall maintain and/or have access to a parts inventory that can meet the City of Mesa's delivery requirements. Submission of this bid shall constitute a guarantee by the bidder that a complete stock of replacement parts for the specified equipment is available and the bidder is in agreement with this provision.
27. **SERVICE.** The successful bidder agrees to the following Fleet Services requirements:
 - A. Must possess a local established, franchised repair shop facility capable of accomplishing corrective action on any component failure.
 - B. The equipment Bidder or manufacturer must be capable of providing repair parts and supply support for a minimum period of 5 years after purchase of the unit(s) offered.
 - C. The equipment Bidder or manufacturer must initiate physical repairs on equipment failures within 72 consecutive hours after notification excluding weekends as well as state and federal holidays during the purchased equipment's warranty period. In the event any and all work is accomplished at the Contractors location, the Contractor shall be responsible for all transportation costs (during the warranty period).
 - D. The City of Mesa has the right to impose a noncompliance charge on the equipment Bidder. Fees shall be the City of Mesa's daily rental rate and any operational costs incurred by the City of Mesa. Fees shall be imposed on the first day after the seventy-two (72) hour

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notification period has terminated. Fees will continue until the Contractor has initiated repairs.

- E. The equipment Bidder and manufacturer must provide technical support and reasonable equipment modification at no cost to the City of Mesa for a period of ninety (90) calendar days after the City of Mesa's acceptance of the purchased unit(s) to ensure the equipment is capable of performing to the City of Mesa's intended operational functions.
28. **TITLE.** Vehicles are to be titled to:
- City of Mesa
Fleet Services Department
PO Box 1466
Mesa, AZ 85211-1466
29. **WORKMANSHIP.** Vehicles shall be free from defects that may impair their serviceability or detract from appearance.
- A. All bodies, systems, equipment, and interfaces with the chassis shall be done in accordance with the OEM chassis Body Builder's Book, NTEA Truck Equipment Handbook and the following City of Mesa – Fleet Engineering Design Standards:
- FS-600 – Welding Standards
 - FS-601 – Fastener Standards
 - FS-602 – Vocational Body Fabrication & Mounting
- B. Whenever dissimilar metals are used, they shall be insulated against corrosive action.
- C. All components will be new. Defective components shall not be furnished. Parts, equipment, and assemblies that have been repaired or modified to overcome deficiencies shall not be furnished without the approval of the City of Mesa. Component parts and units shall be manufactured to definite standard dimensions with proper fits, clearances, and uniformity. Welded, bolted, and rivet construction utilized shall be in accordance with the highest standards of industry. General appearance of the unit shall not show any evidence of poor workmanship.
- D. Reasons for rejection include, but are not limited to:
- (1) Rough, sharp, or unfinished edges, burrs, seams, corners, and joints.
 - (2) Non-uniform panels. Edges not radiused, beveled, etc.
 - (3) Paint runs, sags, orange peel, "fish eyes," etc., and any other imperfection or lack of complete coverage of paint or coatings.
 - (4) Body panels or components that are uneven, unsealed, or contain cracks, dents, or voids.
 - (5) Misalignment of body fasteners, glass, viewing panels, light housings, other items with large or uneven gaps, spacing, etc., such as doors, body panels and hinged panels.
 - (6) Improperly fabricated and routed wiring or harnesses and electrical connections.
 - (7) Improperly supported or secured hoses, wiring harnesses, mechanical controls, etc., including interference with other components.
 - (8) Interference of chassis components, body parts, doors, etc.
 - (9) Leaks of any gas, vacuum, or fluid lines (air conditioning, coolant, oil, oxygen, etc.)
 - (10) Noise, panel vibration, etc.
 - (11) Inappropriate or incorrect use of hardware, fasteners, components, or methods of construction.
 - (12) Incomplete or improper welding, riveting, or bolting.
 - (13) Lack of uniformity and symmetry where applicable.

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- (14) Loose, vibrating abrading body parts, components, subassemblies, hoses, wiring harnesses, or trim.
- (15) Improper body design or interface with the chassis that could cause injury during normal use or maintenance and fail to provide access to perform routine or mandatory repairs or maintenance on the vehicle's electrical and mechanical systems, in addition, the improper combination of options that (by their combination and installation) are inherently incompatible with regard to function or safety.
- (16) Sagging, non-form-fitting upholstery or padding, holes, tears, discoloration, etc.
- (17) Incomplete or incorrect application of rust proofing.
- (18) Visual deformities and equipment malfunction.
- (19) Unsealed appurtenances or other body components, gaskets, etc.
- (20) In addition, any deviation from Specification requirements or any other item (whether or not stipulated herein) that affects form, fit, function, finish, durability, reliability, safety, performance, or appearance shall be cause for rejection.

The City of Mesa shall have the right to define all terms such as "non-compliance", "fault," "defect," or "reject."

30. **EXPECTED PRACTICES AND STANDARDS.** The City of Mesa expects the successful Bidder to make all aftermarket assemblies at a minimum in accordance with the most current FMVSS, safety and OSHA codes. However, the City of Mesa (in most cases) requires assembly procedures that exceed those standards.

Listed below are items that the City of Mesa expects the successful Bidder to do as part of their assembly of subcomponents on all units they are preparing for this bid.

If you have questions as to how the City of Mesa expects any of the listed items to be accomplished, contact Pete Scarafiotti, Automotive Engineer (pete.scarafiotti@mesaaz.gov) for clarification **No less than 48 hours before bid due date and time.**

The items not assembled accordingly to the specifications set herein will be sent back to the Bidder for rework to City standards at the expense of the Contractor, including transportation.

31. **STANDARDS, CODES, RULES, AND REGULATIONS.** The equipment shall be manufactured as per good engineering practice. It shall conform to the best known current manufacturing practices relative to design, materials, strength, quality, durability, safety, and workmanship and shall be in accordance with the latest codes, standards, and practices of the industry and the following professional organizations:

- American National Standards Institute (ANSI)
- American Society of Mechanical Engineers (ASME)
- American Society for Testing and Materials (ASTM)
- American Welding Society (AWS)
- Federal Motor Vehicle Safety Standards (FMVSS)
- Industrial Fastener Institute (IFI)
- International Standards Organization (ISO)
- Joint Industrial Council (JIC)
- National Truck Equipment Association (NTEA)
- Society of Automotive Engineers (SAE)
- The Maintenance Council of The American Trucking Association (TMC)
- Underwriters Laboratory (UL)

EXHIBIT B
PRICING

Pursuant to all the contract specifications enumerated and described in this solicitation, we agree to furnish light duty ½ ton pick-up trucks to the City of Mesa at the price(s) stated below.

Description	Quantity	Unit Price
LIGHT DUTY PICKUP TRUCKS, ½-TON CAPACITY, per specifications Manufacturer: <u>FORD</u> Model: <u>F150 REG CAB 122" WB 6.5' BOX</u> Model Year: <u>2018</u>	each	\$24,365.00
LIGHT DUTY PICKUP TRUCKS, ½-TON CAPACITY, 40 / Console / 40 (Extended Cab and or Crew Cab) per specifications Manufacturer: <u>FORD</u> Model: <u>F150 EXTENDED CAB AND/OR CREW CAB</u> Model Year: <u>2018</u>	each	\$24,660.00

\$1060 INCLUDED IN BASE PRICE FOR ESP POWERTRAIN CARE 5YR/100K MILES NON-TAXABLE

OPTIONS:

Item No.	Description	Unit Price
1.	Regular Cab – 8.1' long box (Fleetside) GVWR: 6,400 lb. OAL: 224.5" WB: 133.0" BBC: 116.5" Plus upgraded front and rear axles & suspension <u><i>This cost is in addition to Unit price.</i></u>	\$300.00 6750 LB. 227.9 OAL 141.1 WB 124.3 BBC
2.	Extended Cab - 6.5' short box (Fleetside) GVWR: 6,400 lb. OAL: 230.2" WB: 143.5" BBC: 141.4" Plus upgraded front and rear axles & suspension <u><i>This cost is in addition to Unit price.</i></u>	\$3,785.00 6900 LB. 231.9 OAL 145" WB 147" BBC

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PRICING

Item No.	Description	Unit Price
3.	Extended Cab – 8.1' long box (Fleetside) GVWR: 6,900 lb. OAL: 249.2" WB: 157.5" BBC: 141.4" Plus upgraded front and rear axles & suspension <u><i>This cost is in addition to Unit price.</i></u>	\$5,090.00 7000 LB. 250.5 OAL 163.7" WB 146.9" BBC
4.	Crew Cab - 6' short box (Fleetside) 5.5' BOX GVWR: 6,700 lb. OAL: 249.2" WB: 143.5" BBC: 148.9" Plus upgraded front and rear axles & suspension <u><i>This cost is in addition to Unit price.</i></u>	\$6,240.00 6800 LB. 231.9 OAL 145" WB 158.8 BBC
5.	Four-Wheel Drive (4x4) Reg. Cab (8' box): Extended Cab (6.5' box): Extended Cab (8' box): Crew Cab (6.5" box)... 5.5' BOX Crew Cab 6.5' box <u><i>This cost is in addition to Unit price.</i></u>	\$4,645.00 \$3,430.00 \$4,380.00 \$3,510.00 \$4,460.00
6.	Engine Option – 6.2 L (consistent towing only) <u><i>This cost is in addition to Unit price.</i></u>	\$N/A
7.	CNG Bi-Fuel or Dedicated (If Available) Must provide specification sheet with bid <u><i>This cost is in addition to Unit price.</i></u>	\$N/A
8.	Power Windows, Door Locks & Mirrors <u><i>This cost is in addition to Unit price.</i></u> OPTION 85A	\$ 970.00 REG CAB \$1,170.00 SUP CAB \$1,170 CREW CAB

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Item No.	Description	Unit Price
9.	Back Up Sensor <u><i>This cost is in addition to Unit price.</i></u> OPTION 76R REQUIRES TRAILER TOW PKG.	\$275.00
10.	Blind Spot Monitor <u><i>This cost is in addition to Unit price.</i></u> OPTION 17B N/A ON XL MODEL	\$590.00
11.	Running Boards / Side Step <u><i>This cost is in addition to Unit price.</i></u> BOARDS OPTION 18B BLACK PLATFORM	\$250.00 BOARDS
12.	Tailgate Step <u><i>This cost is in addition to Unit price.</i></u> OPTION 63T	\$375.00
13.	110 Volt / 400 Watts Outlet 1 PLUG IN INSTRUMENT PANEL, SECOND UNIT IN CONSOLE REQUIRES 40/CONSOLE/40 SEAT (In Console) <u><i>This cost is in addition to Unit price.</i></u> OPTION 91V ONLY ON SUPER CAB AND CREW CAB	\$200.00
14.	Remote Start <u><i>This cost is in addition to Unit price.</i></u> OPTION 59R ONLY AVAILABLE ON XLT AND UP	\$195.00
15.	Bed Side Box Step <u><i>This cost is in addition to Unit price.</i></u> OPTION 63S	\$325.00
16.	LED Remote controlled spotlight: Golight "Stryker" model 30004 (White) RKI rear window guard / rack product number RG10 (White) Go light to be mounted to the top of the RKI guard/rack. City of Mesa to determine position <u><i>This cost is in addition to Unit price.</i></u>	\$1,450.00

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PRICING

Item No.	Description	Unit Price
17.	XLT Package List all previous options that are include with XLT package SEE AFTER PAGE 4 OF PRICING <u><i>This cost is in addition to Unit price.</i></u>	\$4815 S/CAB 4X2 \$5990 R/CAB 4X2 \$4770 R/CAB 4X4 \$4695 C/CAB 4X4 \$4710 C/CAB 4X2 \$4810 S/CAB 4X4

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have 1.75% removed from the taxable item(s) for the purpose of award evaluation (i.25).

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement 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 must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
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 will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
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 will create, any benefits, rights, or responsibilities in any third parties.
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.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can 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.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must 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 must 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 throughout the term of the Agreement. Upon request, Contractor will 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 will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must 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,

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

and will 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 and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, 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 will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide 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 will 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's 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, Contractor must 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 or services to the City.

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

- a. Contractor is responsible for the 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. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- 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.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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.
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.
 - 12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - 12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) 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 will 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.
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 for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will 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 not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
16. **DEFAULT.**
 - a. A party will 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 sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

- iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will 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 bid 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 will 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 will be liable for incidental, special, or consequential damages.
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.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
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 three (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.
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 will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will 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 will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will 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, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
- a. 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 will 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 will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. 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.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will 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.
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 will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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 will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** 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.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
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 will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** 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 Contractor or its employees.
34. **WARRANTY OF RIGHTS.** 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 Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will 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 must, 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 is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (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 will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the 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).
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 will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

performance is so affected must 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 will 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 will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

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. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of 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.

The City currently holds or may enter into Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

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

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.
40. **NOTICES.** All notices to be given pursuant to this Agreement must 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 (iv) sent via email or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, email or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is 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 will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will 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.
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, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.

EXHIBIT 2
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
BERGE FORD INC.

[QUOTE]

See following pages.

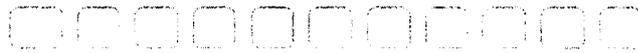


460 East Auto Center Drive
 Mesa, Arizona 85204
 480-497-1111

Theresa Worthen
 Government Fleet Sales
 Phone: 480-497-7544
tworthen@bergeford.com

Date: 2/13/18
Customer: TOWN OF FOUNTAIN HILLS ATTN: JUSTIN FELDY
Vehicle Description: 2018 FORD F150 REG. CAB 4X2 XL

		Base Bid Price:	\$
UPGRADE OPTIONS			
1	2018 FORD F150 REG. CAB 4X2 XL 101A PACKAGE	\$	-
2	PER ATTACHED SPECS	\$	21,468.00
3		\$	-
4		\$	-
5		\$	-
6	NOTE: ORDERED UNITS, LAST DATE TO PLACE	\$	-
7	ORDERS IS 8/1/18 DUE TO EARLY BALANCE	\$	-
8	OUT FOR 2018 F150 16-18 WEEKS ORDER TO DELIVERY	\$	-
9		\$	-
10	SUBJECT TO CHANGE WITHOUT NOTICE PER FORD	\$	-
11	SO I WOULD GET ORDERS IN ASAP	\$	-
12		\$	-
13		\$	-
14		\$	-
15		\$	-
Base Bid Price w/Options:		\$	21,468.00
Tire Tax:		\$	5.00
Sales Tax (8.05%)		\$	1,728.17
Ford Extended Service Plan		\$	-
Transportation Fee		\$	-
TOTAL DELIVERED PRICE			\$23,201.17 EACH



VIRTCDP

CNGP530

VEHICLE ORDER CONFIRMATION

02/08/18 18:18:18

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Dealer: F71175

2018 F-150

Page: 1 of 1

Order No: 0001 Priority: D2 Ord FIN: QE669 Order Type: 5B Price Level: 820

Ord PEP: 101A Cust/Flt Name: FTN HILLS PO Number:

		RETAIL	DLR INV		RETAIL	DLR INV
F1C	F150 4X2 R/C	\$27610	\$26229.00	6100# GVWR		
	122" WHEELBASE			JOB #2 ORDER		
YZ	OXFORD WHITE			53B CLASS IV HITCH	95	88.00
C	CLOTH 40/20/40			AM/FM CD		
G	MED EARTH GRAY			67T TRL BRAKE CONTR	275	253.00
101A	EQUIP GRP	2055	1891.00	FLEX FUEL		
	.XL SERIES			SP DLR ACCT ADJ		(1171.00)
	.POWER EQUIP GRP			SP FLT ACCT CR		(806.00)
	.SYNC			FUEL CHARGE		10.16
	.CRUISE CONTROL			B4A NET INV FLT OPT	NC	7.00
	.17"SILVER STEEL			DEST AND DELIV	1395	1395.00
99B	3.3L V6 PFDI			TOTAL BASE AND OPTIONS	31430	27896.16
446	ELEC 6-SPD AUTO			XL MID DISCOUNT	(750)	(691.00)
	.245/70R-17 A/S			TOTAL	30680	27205.16
X19	3.55 REG AXLE	NC	NC	*THIS IS NOT AN INVOICE*		
F1=Help		F2=Return to Order		F3/F12=Veh Ord Menu		
F4=Submit		F5=Add to Library				
S099	- PRESS F4 TO SUBMIT					QC20305

V1DP0018

2,6

EXHIBIT 3
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
BERGE FORD INC.

[CHANGE ORDERS]

See following pages.