

FIRE: APPARATUS MASTER PURCHASE AGREEMENT (#2014173)

This Fire Apparatus Master Purchase Agreement (hereinafter "Agreement") made and entered into this 24th day of February 2014 between Pierce Manufacturing, Inc. herein "Pierce" or "Vendor" or "Contractor", a corporation duly registered under the laws of the State of Wisconsin, and the City of Mesa, Arizona, herein "Mesa" or "City", a municipal corporation of the State of Arizona (collectively the "Parties").

WITNESSETH:

WHEREAS, the City of Mesa Fire Department desires to standardize its fleet of Fire Apparatus to assure reliability, efficiency and economy in purchasing and obtaining parts, service and repair for its Fire Apparatus; and

WHEREAS, the City of Mesa Fire Department existing Fire Apparatus is predominately manufactured by Pierce Manufacturing, Inc.; and

WHEREAS, the City of Mesa Fire Department has determined Pierce Manufacturing, Inc. is able to provide Fire Apparatus that meets the City's needs and specifications; and

WHEREAS, the City of Mesa City Council has approved the Mesa Fire Department's use of a Pierce Manufacturing, Inc. Fire Apparatus brand-name only specification to affect said standardization;

NOW, THEREFORE, in consideration of the promises contained herein, the Parties agree to the following:

1. VENDOR'S SCOPE OF WORK

- 1.1 The Vendor agrees to furnish the Fire Apparatus, including appurtenance Fire Apparatus ("Fire Apparatus") described in Exhibit A which is incorporated by this reference, and Replacement Parts pursuant to the Terms and Conditions of this Agreement, including Mesa's Standard Terms and Conditions set forth in Exhibit B and the Contractor's Proposal, herein incorporated by this reference.
- 1.2 The Vendor shall ensure that all materials and workmanship contained or used in the Fire Apparatus shall comply with the "Specifications" for each purchase.
- 1.3 The intent of the Specifications is to set forth the minimum acceptable requirements and to take advantage of the latest advancements in the fields. Fire Apparatus shall be of the latest design, production and advanced state of the art as those specified in the Specifications. In the absence of detailed specifications, the best general production practice shall apply and the highest quality material and workmanship shall be used. However, in no case shall the Specifications be construed to require something not meeting all applicable National Fire Protection Association (hereinafter "NFPA") and U.S. Department of Transportation (hereinafter "DOT") standards. If any Specification does not meet these standards, Vendor shall notify the City in writing of alternatives that conform to these standards. All Specifications, whether stated or not, shall meet all applicable NFPA and DOT standards.
- 1.4 The term "Specifications" shall include any written modifications to Specifications that may be agreed to by the City and the Vendor resulting from exceptions submitted by the Vendor.

2. APPARATUS PROPOSAL AND ACCEPTANCE

- 2.1 The City shall provide the Vendor with Specifications for each Fire Apparatus as the Fire Apparatus purchase is needed and funded.

- 2.2 The Vendor shall submit to the City a written pricing proposal, projected delivery dates and any deviations from the Specifications within thirty (30) calendar days of receipt of the proposal request and Specifications.
- 2.2.1 A total price will be given, including all expenses, and will include a customer discount of 3-4.5%. If multiple units are purchased and delivered at the same time, a multiple unit discount ranging from \$8,000 to \$15,000 will be applied to any units purchased after the first unit (the first unit will not receive a multiple unit discount). The exact amount of the multiple unit discount will be determined by the type of units and specifications for the units being purchased. This will be followed by any available payment discounts. Along with this price proposal, Pierce will provide a component list to show the items that will be included. The proposal shall specify how long the price is firm, but not less than 120 days.
- 2.2.2 The Vendor shall state in its proposal the make and model number of the Fire Apparatus it is offering.
- 2.2.3 The proposal shall include sufficient descriptions, technical details Specifications and information, to enable the City to fairly and completely evaluate the Fire Apparatus offered. Failure to comply with this requirement may cause rejection of the proposal. Any deviation from the Specifications shall not relieve the Vendor from the responsibility of furnishing an operational Fire Apparatus, complete and ready to operate for its intended use.
- 2.2.4 The Specifications are the minimum acceptable unless otherwise noted. The Vendor shall indicate compliance, list any deviations, and/or list any modifications needed to meet the Specification, and/or list all data requested.
- 2.2.5 Any deviations from the Specifications shall be clearly identified and explained in writing in the Vendor's proposal. Failure to comply may cause rejection of the proposal.
- 2.2.6 If Vendor is only able to meet the Specifications by modification of the Fire Apparatus offered, then as part of the Vendor's proposal the Vendor shall state in writing that he cannot meet the Specifications and list the modifications that he will have to make.
- 2.2.7 The City will have thirty (30) calendar days to review proposal for appropriateness and accuracy. Evaluation will ensure proposal is appropriate given market conditions and Specifications and will include comparisons to similar Fire Apparatus delivered to other jurisdictions.
- 2.2.8 If the proposal is determined to be acceptable by City staff, it will be forwarded to the Mesa City Council for approval on the next available City Council meeting agenda.
- 2.2.9 If the proposal is rejected by the City or the City Council, an attempt will be made to resolve the cause of rejection.
- 2.2.10 If resolution cannot be reached between the Parties, the City reserves the right to seek an alternative method of purchase, including a competitive bid process involving other appropriate Fire Apparatus vendors. Vendor shall not contest this decision by the City.
- 2.2.11 Upon receipt or a purchase order from the City, the Vendor shall provide a delivery date that is consistent with the proposal. This delivery date may be adjusted by written, mutual agreement of the Parties.
- 2.3 Estimated trade-in values for various City of Mesa apparatus. These trade in values are a minimum. The City may receive higher values due to miles, condition and options that are on that particular vehicle. The City can also elect not to accept the offer and sell the vehicle or vehicles in a seal bid process.

FY 2014/2015

One (1) command van (1996 Chevrolet/Grumman) 102,610 miles \$3,500
One (1) light / air (1998 Pierce Dash) 139,438 miles \$11,500
Five (5) pumpers (1999 Quantum) 180,000 to 200,000 miles \$6,500 each
One (1) ladder (2002 Quantum 85 ft AWS) 141,145 Miles \$20,000
One (1) airport rescue (1999 Oshkosh TA 1500) 19,297 miles \$17,500

FY 2015/2016

On (1) tanker (1995 Ford Pneumax 3000 gallon 500 gpm pump) \$15,000
One (1) light / air (2002 Pierce KW T300) \$35,000
One (1) rehab (2001 Pierce KW T300) \$25,000
One (1) pumper (2001 Pierce Quantum) \$12,000

FY 2016/2017

One (1) pumper (2001 Pierce Quantum) \$12,000
One (1) ladder (2001 Pierce Quantum 85 ft AWS) \$30,000

FY 2017/2018

Three (3) pumpers (2001, 2002, 2003 Pierce Quantum) \$12,000 each

FY 2018/2019

One (1) ladder (2005 Pierce Quantum 85ft AWS Quantum) \$30,000
Two (2) pumper (2003, 2005 Quantum) \$12,000 each

FY 2019/2020

One (1) ladder (2006 Pierce Quantum 85ft AWS) \$30,000
One (1) pumper (2005 Pierce Quantum) \$12,000

FY 2020/2021

One (1) pumper (2005 Quantum) \$12,000
One (1) Heavy Rescue (2006 Pierce Quantum) \$20,000

3. GENERAL CONDITIONS

- 3.1 The Purchase Contract is intended to provide the City with new Fire Apparatus ready for regular and normal use.
 - 3.1.1 All Fire Apparatus, components, and parts shall be new and unused. All Fire Apparatus, components, and parts shall be the manufacturer's latest model and design proven in use by municipalities. All components shall be integrated in design and construction to work effectively together.
 - 3.1.2 The Fire Apparatus shall contain all manufacturer's standard equipment and accessories that are included as standard in the advertised and published literature for the fire apparatus. No such Fire Apparatus item or accessory shall be removed or omitted for the reason that it was not specified in the Specifications. Standard Fire Apparatus items may be removed only where necessary to install other items in lieu thereof to comply with the Specifications; and any such removal or substitution shall be listed in writing as part of the Vendor's proposal.
 - 3.1.3 All Fire Apparatus shall be certified as meeting all federal and state laws and safety regulations, including required accessories and items.
- 3.2 The Vendor shall honor all warranties, given or implied. Warranty provisions will be specific to each Fire Apparatus and set forth in the Specifications. Remedies available to the City under the warranty shall include repair or replacement of components, at the Vendor's option, of the Fire Apparatus identified as defective.

- 3.3 During the lifetime of the Fire Apparatus, Vendor shall provide all parts needed for service and repair of the Fire Apparatus.
- 3.2.1 The Vendor shall attempt to provide all parts needed within two (2) working days after order. It is understood that items like entire cabs, bodies, frames, etc., which may be damaged as a result of the accident will be furnished as soon as practical and a delivery date shall be provided at time or order.
- 3.2.2 All replacement parts and components used shall be authorized by the Fire Apparatus manufacturer.
- 3.2.3 All repair parts pricing discounts (15% discount off current parts prices) shall be firm for the Term 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 any contract resulting from this bid. The Contractor certifies that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions. The Contractor further agrees that any reduction in price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.
- 3.2.4 A restocking fee will apply to custom parts returned, or parts that are not returned by the City within one hundred-twenty (120) days.
- 3.4 A performance Bond in the amount of 100% of the Fire Apparatus price shall be delivered to the City by the Vendor within ten (10) working days after the Vendor receives a Purchase Order for each Fire Apparatus. The Performance Bond shall remain in effect until the Fire Apparatus is accepted by the City.
- 3.5 All prices quoted shall show all applicable taxes as separate line items. All prices quoted shall be prepaid F.O.B destination and delivered to the location in the City as specified in the Purchase Order. Title and risk of loss will not pass to the City until the unit is accepted, delivered and full payment is made.
- 3.6 The City shall have the option of performing a final inspection of the finished vehicle at the factory to ensure compliance with City Specifications.
- 3.7 The Fire Apparatus shall be delivered ready to be put into intended service.
- 3.8 Each and every calendar day that delivery is delayed, the City may deduct from the monies due or to become due to the Vendor. The amount shall be sum of \$100.00 per calendar day, commencing on the day after the delivery date mutually agreed upon at the time of order. The total sum is not as a forfeit or penalty, but is for liquidated damages. This sum is fixed and agreed upon since the actual damage to the City and to the public will be impossible or very difficult to determine.
- 3.9 The Fire Apparatus shall comply with the Specifications at the time of delivery. Prior to Acceptance of the Fire Apparatus and payment of the invoice, the City shall inspect the Fire Apparatus against the Specifications. The Fire Apparatus shall meet or exceed all Specifications ("Acceptance"). The Vendor will be given at least 30 calendar days to correct any deficiencies in the apparatus. If payment discounts are elected for any fire apparatus purchases, those payment terms will override the terms in the multiple year contract.
- 3.10 Either party, with 30 days written notice, may cancel this Agreement. Once an order is placed for an Apparatus the order may be cancelled by the City within sixty (60) calendar days without penalty. If an Apparatus has been on order for more than sixty (60) calendar days, the order may be cancelled without penalty by mutual agreement or a negotiated settlement based on the manufacturer's costs incurred. Orders that are not cancelled shall be subject to the terms of this agreement, regardless of delivery date.

All orders shall be deemed cancelled at the time this Agreement is cancelled unless the City establishes the contrary through a specific writing.

3.11 Contractor shall maintain insurance coverage for liability risks normally associated with the goods and materials and/or services covered by the contract.

- The Contractor can utilize any combination of primary, excess and/or umbrella liability policies to meet the following limits throughout the Term of this Agreement:

Commercial General Liability Occurrence Form LX9641 (02/11):

- \$1,000,000 Each occurrence Bodily Injury and Property Damage Liability
- \$1,000,000 Products/Completed Operations Aggregate
- \$5,000,000 General Aggregate
- \$1,000,000 Personal and Advertising Injury

Commercial Umbrella Liability Coverage Occurrence Form LX9799 (10-05):

- Each Occurrence: \$25,000,000
- Products & Completed Operations Aggregate: \$25,000,000
- General Aggregate: \$25,000,000

Commercial Umbrella policy is on a follows form basis.

- The City, its Mayor and City Council, appointed boards and commissions, officials, officers and employees, individually and collectively, shall be included as Additional Insured-Designated Person or Organization for General Liability subject to policy term, conditions and exclusions.
- The Vendor shall maintain the following Commercial Automobile Liability Coverage: \$1,000,000 Each Accident Bodily Injury and Property Damage Combined Single Limit.
- The Contractor shall maintain Worker's Compensation insurance to cover obligations imposed by federal and state statute.

Prior to the execution of the Contract, the Contractor shall provide the City with a Certificate of Insurance (using appropriate ACORD certificate), and all applicable endorsements.

Contractor's General Liability insurance coverage shall be primary. Certificate of insurance will provide the following: All policies shall provide a 30-day notice of cancellation to the named insured. The Certificate of Insurance shall provide the following cancellation clause:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

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

3.12 Fire Apparatus and replacement parts shall be delivered to:

City of Mesa
Fire Resources
6935 E. Decatur
Mesa, AZ 85207

4. TERM

The term of this Master Purchase Agreement shall be five (5) years from its execution with the option of a three (3) year renewal, subject to the approval of the Mesa City Council. Both parties must agree in writing to renew the contract. Orders placed before expiration of and pursuant to this Agreement shall be subject to the terms of this Agreement, regardless of the delivery date.

5. PRICE ADJUSTMENTS

The City reserves the right to purchase additional Apparatus based on previous proposals from this Agreement in future fiscal years. Requests for adjustment shall be capped and not to exceed 4% or the PPI, whichever is lower based on the original contracted rate. If the City agrees to the adjusted price terms, City shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index for PCU3361203361202 Heavy Duty Truck Manufacturing: Trucks, Truck Tractors, and Bus Chassis (chassis of Own Manufacture) 33,001 Lb or More.

Any future Drivetrain Component (engine, transmission, axles, etc.) changes required by regulatory agencies (i.e. NFPA, DOT, EPA, etc.) will be provided at additional costs. The Vendor shall document and notify the City of the charges for any of these specific Drivetrain Components at the current price including the contracted customer discount ranging from 3-4% off the current being offered by Pierce Manufacturing, Inc. at that time.

6. CONTRACT DOCUMENTS

The term "Contract Documents" means the documents comprising this Agreement of the parties. The Contract Documents shall always consist of the following documents:

- A. This Agreement (including Exhibit A -- Anticipated Fire Apparatus Purchase Schedule and Exhibit B -- Mesa Standard Terms and Conditions)
- B. Each Fire Apparatus purchase will also be subject to its own Specifications and Vendor proposal that are to be interpreted consistently with this Agreement

In the event of any conflict of inconsistency among the Contract Documents, said conflict of inconsistency shall be resolved by giving precedence to the documents in the order in which they appear above, unless the terms in lower ordered documents are agreed to by both parties in writing.

7. NOTICES

Any notices or demand which under the terms of this Agreement or under any statute must or may be given or made shall be in writing and shall be given or made a personal service, telegram, first class mail, FedEx, or by certified or registered mail to the parties at the following address:

City of Mesa, Arizona
Attn: Ed Quedens, Business Services Director
PO Box 1466
Mesa, AZ 85211-1466

City of Mesa, Arizona
Attn: Fire Chief Harry Beck
PO Box 1466
Mesa, AZ 85211-1466

Pierce Manufacturing, Inc.
Attn:
Title:
2600 American Drive
Appleton, WI 54914

Hughes Fire Equipment, Inc.
Attn: Rex Hughes
910 Shelley Street
Springfield, OR 97477

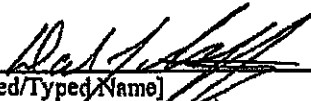
8. SEVERABILITY

In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

This Agreement will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement [or other document type] in triplicate originals on the day and year first above written.

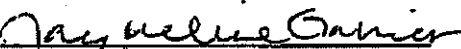
PIERCE MANUFACTURING
A Wisconsin Corporation

By: 
[Printed/Typed Name]
[Title] David J. Stoffel
Sr. Manager, Order Management

RECOMMENDED BY:

By: 
Harry Beck
Fire Chief

APPROVED AS TO FORM:

By: 
Jacqueline Ganier
Assistant City Attorney

CITY OF MESA, ARIZONA
An Arizona Municipal Corporation

By: 
Edward Quedens
Business Services Director

EXHIBIT A – ANTICIPATED FIRE APPARATUS PURCHASE SCHEDULE

EXHIBIT B – MESA STANDARD TERMS AND CONDITIONS

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

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City or its agents to inspect applicable personnel records to verify such compliance. Contractor shall ensure and keep appropriate records to demonstrate that all Contractor Personnel have a legal right to live and work in the United States.
- (i) Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the right to inspect the papers of all Contractor Personnel who provides Services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable Federal, State and local laws and executive orders regarding employment. Contractor and Contractor Personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. §35-392, the Contractor shall not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

S.10 SALES/USE TAX, OTHER TAXES.

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

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

- S.12 **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to State law in response to a public records request or to subpoena or other judicial process.
- S.13 **AUDITS AND RECORDS.** Contractor shall preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor shall permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
- S.14 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor Personnel who would perform Services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately.
- S.15 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City shall have final authority, based on security reasons: (i) to determine when security clearance of Contractor Personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor Personnel; and (iii) to determine whether or not any individual or entity may provide Services under this Agreement. If the City objects to any Contractor Personnel for any reasonable cause, then Contractor shall, upon notice from the City, remove any such individual from performance of Services.
- S.16 **DEFAULT.**
- a. A party shall be in default if that party:
 - (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - (ii) Is the subject of a petition for involuntary bankruptcy not removed within 60 Days;
 - (iii) Conducts business in an unethical or illegal manner; or
 - (iv) Fails to carry out any term, promise, or condition of the Agreement.
 - b. Whenever the City in good faith has reason to question Contractor's intent to perform, the former party may demand that the other party give a written assurance of its intent to perform. In the event that the demand is made and no written assurance is given within 5 Days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- S.17 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy shall not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination shall be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by (i) requiring immediate reimbursement to the City (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security; if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as

- provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including but not limited to administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party shall have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party shall be liable for incidental, special, or consequential damages.
- S.18 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- S.19 **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within 3 years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.20 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City shall have the right to terminate the Agreement without penalty on the last Day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate 30 Days prior to the stated termination date.
- S.21 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor shall be entitled only to payment for those Services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City shall make final payment within thirty (30) Days after the City has both completed its appraisal of the Materials and Services provided and received Contractor's properly prepared invoice.
- S.22 **NON-WAIVER OF RIGHTS.** There shall be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any Services hereunder, shall not release the other party of any of the warranties or other obligations of the Agreement and shall not be deemed a waiver of any such rights or remedies.
- S.23 **INDEMNIFICATION/LIABILITY.**
- a. Indemnification, General. To the fullest extent permitted by Law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the Services provided by Contractor Personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor Personnel; and (iii) Contractor or Contractor Personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor shall update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and shall not indemnify or hold Contractor or any third-party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

- S.24 **WARRANTY.** Contractor warrants that all Services will be performed in a good, workman-like and professional manner. If any Materials or Services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide Materials or redo such Services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, the Contractor warrants that Materials shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and shall perform in accordance with manufacturer's published specifications.
- S.25 **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor shall do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and shall at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.26 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of Materials or Services or any Materials or Services at all under this Agreement and acknowledges and agrees that the Materials or Services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but shall not bind it to purchase, accept, or pay for Materials or Services which exceed its actual needs.
- S.27 **OWNERSHIP.** All deliverables, Services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and shall not be used or released by Contractor or any other person except with prior written permission by the City.
- S.28 **USE OF NAME.** Contractor shall not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
- S.29 **CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
- S.30 **FOB POINT.** All deliveries shall be FOB destination unless otherwise agreed. Freight charged/terms shall be as agreed.
- S.31 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these Services and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
- S.32 **SAFEGUARDING CITY PROPERTY.** The Contractor will be responsible for any damage to City Real property or damage or loss of City Personal Property when such property is the responsibility of or in the custody of the Contractor or its employees.
- S.33 **WARRANTY OF RIGHTS.** The Contractor warrants it has title to, or the right to allow the City to use, the Materials and Services being provided and that the City may use same without suit, trouble or hindrance from the Contractor or third parties.
- S.34 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor shall, without limitation, at its expense defend the City against all claims asserted by any person that anything

provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the City the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than 5 years, and plus any additional costs the City may incur to acquire substitute supplies or services.

- S.35 **CONTRACT ADMINISTRATION.** The contract shall be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract shall be referred to an administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrator(s).
- S.36 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected shall within 5 Days notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected shall also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances shall delays caused by a force majeure extend beyond one hundred-twenty (120) Days from the scheduled delivery or completion date of a task.
- S.37 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.
- If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The district shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.
- Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by others.
- S.38 **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.

- S.39 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.40 **NOTICES.** All notices to be given pursuant to this Agreement shall be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or sent via facsimile. If provided by personal delivery, receipt shall be deemed effective upon delivery. If sent via certified or registered mail, receipt shall be deemed effective 3 Days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt shall be deemed effective 2 Days after the sending thereof.
- S.41 **GOVERNING LAW, FORUM.** This Agreement shall be governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.
- S.42 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, shall supersede all prior oral or written agreements, if any, between the parties, and shall constitute the entire agreement between the parties with respect to the work to be performed.
- S.43 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.44 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.45 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, shall survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, Termination, or other expiration of this Agreement shall not release any party from any liability or obligation arising prior to the date of termination.

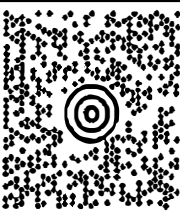
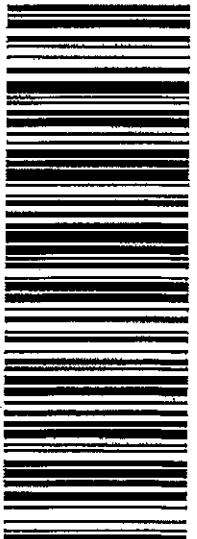
UPS CampusShip: View/Print Label

1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
UPS locations Include the UPS Store®, UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.
Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
Hand the package to any UPS driver in your area.
Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Dally Pickup

Your driver will pickup your shipment(s) as usual.

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JESSIE LEWELYN 020-832-3453 PIERCE MFG 2600 AMERICAN DR APPLETON WI 54914	SHIP TO: MATTHEW BAUER CITY OF MESA PURCHASING SUITE #400 20 E. MAIN ST. MESA AZ 85201-7425	0.0 LBS LTR 1 OF 1
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