

CITY OF FLAGSTAFF

CONTRACT FOR PURCHASE OF TWO (2) FORD POLICE INTERCEPTOR UTILITY HYBRID VEHICLES

Contract No. 2019-83

This Contract is entered into this 26 day of APRIL, 2019 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Babbitt Ford L/M, LLC, a State of Arizona company ("Contractor").

WHEREAS, the City desires to receive, and Contractor is able to provide materials and/or services;

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

1. Scope of Work: Contractor shall provide **TWO (2) FORD POLICE INTERCEPTOR UTILITY HYBRID VEHICLES**, subject to all terms, conditions, and specifications provided in the response to this Solicitation and in the Scope of Work attached hereto as Exhibit A.
2. Compensation: In consideration for the Contractor's satisfactory performance, City shall pay Contractor **\$79,819.96**, plus applicable warranty costs. Any price adjustment must be approved in writing and approved by the parties. The City Manager or his designee (the Purchasing Director) may approve an adjustment if the Contract price is less than \$50,000; otherwise City Council approval is required.
3. Standard Terms and Conditions: The City of Flagstaff Standard Terms and Conditions, attached hereto as Exhibit B are hereby incorporated in this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
4. Special Terms and Conditions: The City of Flagstaff Special Terms and Conditions, attached hereto as Exhibit C are hereby incorporated in this Contract by reference and shall apply to performance of this Contract, except to the extent modified in Exhibit A.
5. Insurance: Contractor shall meet Insurance Requirements of the City as set forth in Exhibit D.
6. Contract Term: The Contract term will be for one (1) year from the date the Contract is signed. This one-year term will allow for additional purchases by the Fleet Committee if needed within the term.
7. Notice. Any formal notice required under this Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Jessica Bryson
Senior Procurement Specialist
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, Arizona 86001
Email: jbryson@flagstaffaz.gov

To Contractor:

Nick Cashatt
Fleet Manager
Babbitt Ford L/M, LLC
11 N. Verde St.
Flagstaff, Arizona 86001
Email: nickcashatt@babbitt-ford.com


With a copy to:

Chad Smith
Special Services Supervisor
Flagstaff Police Department
911 E Sawmill Rd.
Flagstaff, Arizona 86001
chadsmith@coconino.az.gov

With a copy to:


8. Authority. Each party warrants that it has authority to enter into this Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into this Contract.

CONTRACTOR



Print name: NICK CASHATT
Title: FLEET MANAGER

CITY OF FLAGSTAFF



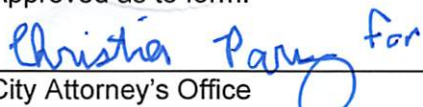
Print name: BARBARA GOODRICH
Title: CITY MANAGER

Attest:



City Clerk

Approved as to form:



City Attorney's Office

Notice to Proceed issued: _____, 2018⁹

EXHIBIT A

SCOPE OF WORK

Two (2) Ford Police Interceptor Utility Hybrid Vehicles

BACKGROUND: The Police Department is seeking to purchase two (2) Ford Police Interceptor Utility Hybrid Vehicles.

MATERIALS AND/OR SERVICES: The City seeks to purchase, and Contractor will supply: Two (2) Ford Police Interceptor Utility Hybrid Vehicles. The vehicles must include the following components:

- K8A - Standard Hybrid Engine
- 43D - Dark Car Feature
- 51P - Spot Lamp Prep Kit (Driver Only)
- 55B - Blind Spot Monitoring
- 55F - Remote Keyless Entry (4 keys)
- 76R - Reverse Sensing System

Interior Color: Agate Black
Exterior Color: Agate Black

SCHEDULE: No schedule at this time.

SPECIAL TERMS AND CONDITIONS: Reserved.

SPECIFICATIONS: Reserved.

COMPENSATION: As approved by the parties in the resulting Contract.

BID (FORM)

TO THE CITY OF FLAGSTAFF: The undersigned Bidder hereby offers and agrees to furnish materials and/or services in compliance with the Solicitation, including any Addenda, and as described in this Bid made to the City, including the attached manufacturer's specifications and dimension sheet.

SOLICITATION NUMBER: 2019-83

DESCRIPTION OF UNITS: TWO (2) FORD POLICE INTERCEPTOR UTILITY HYBRID VEHICLES

PRICE PER UNIT \$36,370.00 TOTAL PRICE FOR TWO (2) UNITS \$73,254.00

FREIGHT \$ —

TAX (5.5%) % \$6,555.96

TOTAL PRICE \$79,810.96

OPTIONS (Please state additional cost from "Total Unit Price" or "base price")

(1) TPT Tax for the City of Flagstaff \$?

(2) Extended warranty (attach or submit copy) \$ 0

(3) Total Amount Due including all taxes \$79,810.96

Any other specifications not standard, but being requested by City, must be included here, with price.

Miscellaneous charges: ARIZONA TIRE DISPOSAL FEE 10⁰⁰

(All charges must be included; no extra charges will be considered at a later date. Miscellaneous charges will be considered in determining the low bid)

DELIVERY:

Maximum number of calendar days to deliver after receipt of a purchase order and start of production

Wt? ~~180~~ Days.

Nick Pashott
Signature of Person Authorized to Sign Bid

NICK PASHOTT
Printed Name

FLEET MANAGER
Title

2-20-2019
Date

2020 POLICE INTERCEPTOR UTILITY POLICE INTERCEPTOR CONTENT

Unique Police Interceptor Utility Features Include:

MODEL/SERIES/AVAILABILITY

- 3 Available Models
 - 3.3L V6 Direct-Injection Hybrid Engine System (AWD)★
 - 3.3L V6 Direct-Injection FFV AWD★
 - 3.0L V6 EcoBoost® AWD★
- 1 Available Series
 - 500A

MECHANICAL

- ★ 3.3L Police-Calibrated V6 Direct-Injection Hybrid Engine System – Standard (Hybrid technology is optimal for performance and long days spent idling on the job)
- AWD Drivetrain – Standard for enhanced handling precision and unsurpassed traction on wet or dry surfaces
- ★ Transmission – 10-speed automatic, police calibrated for maximum acceleration and faster closing speeds
- ★ Lithium-Ion Battery Pack
- ★ Brakes – Police calibrated high-performance regenerative braking system
- 4-Wheel heavy-duty disc w/heavy-duty front and rear calipers
- Brake Rotors – large mass for high thermal capacity and calipers with large swept area.
- Electric Power-Assist Steering (EPAS) – Heavy-Duty
- ★ DC/DC converter – 220-Amp (in lieu of alternator)
- ★ H7 AGM Battery (Standard; 800 CCA/80-amp)
- ★ H8 AGM Battery (Available; 850 CCA/92-amp)
- Cooling System – Heavy-duty, large high volume radiator, Engine oil cooler and transmission oil cooler
- Engine Idle Hour Meter
- Engine Hour Meter
- Powertrain mounts – Heavy-Duty
- ★ Class III Trailer Hitch Receiver with 5,000 lbs. towing capacity
- Wheels
 - Heavy-duty steel, vented with center cap
 - Full size spare tire w/TPMS
- ★ 50-State Emissions System

INTERIOR FEATURES

- ★ Cargo Area – Spacious area for police equipment; Lithium-Ion Battery Pack does not intrude into the cargo area
- Column Shifter
- Seats
 - Front – Police grade cloth – 6-way power-adjustable Manual lumbar, seatback foam designed to comfortably accommodate a utility belt
 - Built-in steel intrusion plates in both front-seatbacks
 - 2nd Row – Police grade vinyl, offers easy care for cleaning
- Flooring – Heavy-Duty vinyl; offers ease of cleaning and long-term durability
- Liftgate access with manual lock cylinder
- Simple Fleet Key (w/o microchip, easy to replace, 4-keys)
- Speedometer – Certified, digital readout in message center and analog gauge
- Universal equipment tray atop instrument panel (ideal for radar and other police equipment)

POLICE UPFIT FRIENDLY

- Consistent 11-inch space between driver and passenger seats for aftermarket consoles (9-inch center console mounting plate)
- Console mounting plate
- Dash pass-thru opening for aftermarket wiring
- Headliner – Easy to service
- Integrated LED police flashers (available)
- ★ Rear-center seat delete (available)
- Taillamps – Integrated police flashers (available)
- Two (2) 50 amp battery ground circuits – power distribution junction block (repositioned behind 2nd row seat floorboard).

TECHNOLOGY

- ★ Ford Telematics™ – Includes Ford Modem and complimentary 2-year subscription
- ★ Police Perimeter Alert (available; detects and analyzes motion in an approximately 270-degree radius on sides and back of vehicle)
- ★ Rear Camera On-Demand (available)
- Front Interior Visor Light Bar (LED) Super low-profile warning LED light bar fully integrated into the top of the windshield near the headliner – fully programmable (available; Red/Blue/White LED lights)
- ★ Rear Auxiliary Liftgate Lights (available; Red/Blue LED Lights; located beneath liftgate glass in applique panel)
- Rear Spoiler Traffic Warning Lights (LED) – Fully integrated in rear spoiler for enhanced visibility; Provides red/blue/amber directional lighting – fully programmable (available)
- ★ Pre-Collision Assist with Pedestrian Detection (available; includes Forward Collision Warning and Automatic Emergency Braking and unique disable switch for Law Enforcement use)
- BLIS® – Blind Spot Monitoring with Cross-traffic Alert (available)
- ★ Bluetooth® Interface – Includes hands-free voice command support (compatible with most Bluetooth connected mobile devices)
- Unique Steering Wheel (with 4-remappable latching switches)

SAFETY/SECURITY HIGHLIGHTS

- 75-mph Rear-impact Crash Tested
 - Note:** The full-size spare tire secured in the factory location is necessary to achieve police-rated 75-mph rear impact crash-test performance attributes
- AdvanceTrac® w/RSC® (Roll Stability Control®) police tuned gyroscopic sensors work seamlessly with the ABS
- Ballistic Door-Panels (National Institute of Justice (NIJ) certified to stop T type III, IV, all lesser NIJ rounds, as well as additional special threat rounds) (available)
- Exterior Key Locks – Driver, passenger and liftgate
- Police Engine Idle feature (available)
- Rear Video Camera with Washer (standard)
- Reverse Sensing (available)

GENERAL

- Underbody deflection plate no longer standard on EcoBoost® models (order 76D)
- Front Headlamp Lighting Solution now includes Red/Blue/White LED Strobes

WARRANTY

- 3 Year / 36,000 Miles Bumper / Bumper
- 8 Year / 100,000 Miles Hybrid Unique Components

POWERTRAIN CARE EXTENDED SERVICE PLAN

- 5-year/100,000-mile Powertrain CARE Extended Service Plan (zero deductible) – Standard

Product Changes and Features Availability

Features, options and package content subject to change. Please check www.fmcdealer.com for the most current information.

2020 POLICE INTERCEPTOR UTILITY STANDARD EQUIPMENT

The following items are std. 2020MY POLICE INTERCEPTOR UTILITY vehicle:

MECHANICAL

- Axle Ratio – 3.73 (AWD)
- Brakes – 4-Wheel Heavy-Duty Disc w/H.D. Front and Rear Calipers
- ★ Class III Trailer Hitch Receiver
- Column Shifter
- ★ DC/DC converter – 220-Amp (in lieu of alternator)
- Drivetrain – All-Wheel-Drive
- Electric Power-Assist Steering (EPAS) – Heavy-Duty
- Engine – 3.3L V6 Direct-Injection Hybrid Engine System
- Engine Hour Idle Meter
- Engine Hour Meter
- Engine Oil Cooler
- Fuel Tank – 19-gallons
- ★ H7 AGM Battery (800 CCA/80-amp)
- ★ Lithium-Ion Battery Pack
- Suspension – independent front & rear
- ★ Transmission – 10-speed automatic

EXTERIOR

- Antenna, Roof-mounted
- Cladding – Lower bodyside cladding (MIC)
- Door Handles – Black (MIC)
- Exhaust, True Dual (down-turned)
- Door-Lock Cylinders (Front Driver / Passenger / Liftgate)
- Glass – 2nd Row, Rear Quarter and Liftgate Privacy Glass
- Grille – Black (MIC)
- ★ Headlamps – Automatic, LED Low-and-High-Beam
 Note: Includes Front Headlamp / Police Interceptor Housing (with LED wig-wag feature)
 - Pre-drilled hole for side marker police use, does not include LED strobe, but includes LED wig-wag functionality (eliminates need to drill housing assemblies and provides LED wig-wag feature)
 - Pre-molded side warning LED holes with standard sealed capability (does not include LED installed lights)
 - Wig-wag default is traditional ping-pong pattern; can be programmed to triple-burst pattern or ping-pong / triple-burst
 Note: Must be wired to vehicle's light controller to enable wig-wag functionality; recommend Ready for the Road Package (67H) or Ultimate Wiring Package (67U)
- Liftgate – Manual 1-Piece – Fixed Glass w/Door-Lock Cylinder
- Mirrors – Black Caps (MIC), Power Electric Remote, Manual Folding with Integrated Spotter (integrated blind spot mirrors not included when equipped with BLIS®)
- Spare – Full size 18" Tire w/TPMS
- Spoiler – Painted Black
- Tailgate Handle – (MIC)
- Tail lamps – LED
- Tires – 255/60R18 A/S BSW
- Wheel-Lip Molding – Black (MIC)
- Wheels – 18" x 8.0 painted black steel with wheel polished stainless steel hub cover
- Windshield – Acoustic Laminated

INTERIOR/COMFORT

- Cargo Hooks in cargo area
- Climate Control – Dual-Zone Electronic Automatic Temperature Control (DEATC)
- Door-Locks
 - Power
 - Rear-Door Handles and Locks Operable
- Fixed Pedals (Driver Dead Pedal)
- Floor – Flooring – Heavy-Duty Thermoplastic Elastomer
- Glove Box – Locking/non-illuminated
- Grab Handles – (1 – Front-passenger side, 2-Rear)
- Liftgate Release Switch located in overhead console (45 second timeout feature)
- Lighting
 - Overhead Console
 - Red/White Task Lighting in Overhead Console
 - 3rd row overhead map light
- Mirror – Day/night Rear View
- Particulate Air Filter
- Powerpoints – (1) First Row
- Rear-door closeout panels
- Rear-window Defrost

INTERIOR/COMFORT (continued)

- Scuff Plates – Front & Rear
- Seats
 - 1st Row Police Grade Cloth Trim, Dual Front Buckets with reduced bolsters
 - 1st Row – Driver 6-way Power track (fore/aft. Up/down, tilt with manual recline, 2-way manual lumbar)
 - 1st Row – Passenger 2-way manual track (fore/aft. with manual recline)
 - Built-in steel intrusion plates in both driver/passenger seatbacks
 - 2nd Row Vinyl, 35/30/35 Split Bench Seat (manual fold-flat, no tumble) – fixed seat track
- Speed (Cruise) Control
- Speedometer – Calibrated (includes digital readout)
- Steering Wheel – Manual / Tilt / Telescoping, Urethane wheel finish w/Silver Painted Bezels with Speed Controls and 4 user-configurable latching switches
- Sun visors, color-keyed, non-illuminated
- Universal Top Tray – Center of I/P for mounting aftermarket equipment
- Windows, Power, 1-touch Up/Down Front Driver/Passenger-Side with disable feature

SAFETY/SECURITY

- AdvanceTrac® w/RSC® (Roll Stability Control®)
- Airbags, dual-stage driver & front-passenger, side seat, passenger-side knee, Roll Curtain Airbags and Safety Canopy®
- Anti-Lock Brakes (ABS) with Traction Control
- ★ Brakes – Police calibrated high-performance regenerative braking system
- Belt-Minder® (Front Driver / Passenger)
- Child-Safety Locks (capped; set to "on")
- Individual Tire Pressure Monitoring System (TPMS)
- LATCH (Lower Anchors and Tethers for Children) system on rear outboard seat locations
- Rearview Camera with Washer viewable in 4.2" center stack.
 Note: Rearview Camera viewable in rearview mirror (available) – order 87R (no-charge option)
- Seat Belts, Pretensioner/Energy-Management System w/adjustable height in 1st Row
- SOS Post-Crash Alert System™

FUNCTIONAL

- Audio
 - AM/FM / MP3 Capable / Clock / 4-speakers
 - Bluetooth® interface★— Includes hands-free voice command support (compatible with most Bluetooth connected mobile devices)
 - ★ USB Port — (1)
 - 4.2" Color LCD Screen Center-Stack "Smart Display"
- Easy Fuel® Capless Fuel-Filler
- ★ Ford Telematics™ – Includes Ford Modem and complimentary 2-year subscription
- Front door tether straps (driver/passenger)
- Power pigtail harness
- ★ Recovery Hooks; two in front and trailer bar in rear
- Simple Fleet Key (w/o microchip, easy to replace; 4-keys)
- Two-way radio pre-wire
- Two (2) 50 amp battery ground circuits – power distribution junction block (behind 2nd row passenger seat floorboard)
- Wipers – Front Speed-Sensitive Intermittent; Rear Dual Speed Wiper

EXHIBIT B

STANDARD TERMS AND CONDITIONS

IN GENERAL

1. **NOTICE TO PROCEED:** Contractor shall not commence performance until after City has issued a Notice to Proceed.
2. **LICENSES AND PERMITS:** Contractor shall maintain current federal, state, and local licenses, permits and approvals required for performance of the Contract, and provide copies to City upon request.
3. **COMPLIANCE WITH LAWS:** Contractor shall comply with all applicable federal, state and local laws, regulations, standards, codes and ordinances in performance of this Contract.
4. **NON-EXCLUSIVE:** Unless expressly provided otherwise in the Contract, this Contract is non-exclusive, and the City reserves the right to contract with others for materials or services.
5. **SAMPLES:** Any sample submitted to the City by the Contractor and relied upon by City as representative of quality and conformity, shall constitute an express warranty that all materials and/or service to be provided to City shall be of the same quality and conformity.

MATERIALS

6. **PURCHASE ORDERS:** The City will issue a purchase order for the materials covered by the Contract, and such order will reference the Contract number.
7. **QUALITY:** Contractor warrants that all materials supplied under this Contract will be new and free from defects in material or workmanship. The materials will conform to any statements made on the containers or labels or advertisements for the materials and will be safe and appropriate for use as normally used. City's inspection, testing, acceptance or use of materials shall not serve to waive these quality requirements. This warranty shall survive termination or expiration of the Contract.
8. **ACCEPTANCE:** All materials and services provided by Contract are subject to final inspection and acceptance by the City. Materials and services failing to conform to the Contract specifications may be rejected in whole or part. If rejected, Contractor is responsible for all costs associated arising from rejection.
9. **MANUFACTURER'S WARRANTIES:** Contractor shall deliver all Manufacturers' Warranties to City upon City's acceptance of the materials.
10. **PACKING AND SHIPPING:** Contractor shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.

11. **TITLE AND RISK OF LOSS:** The title and risk of loss of material shall not pass to the City until the City receives the material at the point of delivery, and the City has completed inspection and has accepted the material, unless the City has expressly provided otherwise in the Contract.
12. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach and Contractor shall not have the right to substitute a conforming tender without prior written approval from the City.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.
14. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
15. **LIENS:** All materials and other deliverables supplied to the City shall be free of all liens other than the security interest held by Contractor until payment in full is made by the City. Upon request of the City, Contractor shall provide a formal release of all liens.
16. **CHANGES IN ORDERS:** The City reserves the right at any time to make changes in any one or more of the following: (a) methods of shipment or packing; (b) place of delivery; and (c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

PAYMENT

17. **INVOICES:** A separate invoice shall be issued for each shipment and each job completed. Invoices shall include the Contract and/or Purchase Order number, and dates when goods were shipped, or work performed. Invoices shall be sent within 30 days following performance. Payment will only be made for satisfactory materials and/or services received and accepted by City.
18. **LATE INVOICES:** The City may deduct up to 10% of the payment price for late invoices. The City operates on a fiscal year budget, from July 1 through the following June 30. Except in unusual circumstances, which are not due to the fault of Contractor, City will not honor any invoices or claims submitted after August 15 for materials or services supplied in the prior fiscal year.
19. **TAXES:** Contractor shall be responsible for payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's performance of this Contract. Such taxes include but are not limited to federal and state income tax, social security tax, unemployment insurance taxes, transaction privilege taxes, use taxes, and any other taxes or business license fees as required.

Exception: The City will pay any taxes which are specifically identified as a line item dollar amount in the Contractor's bid, proposal, or quote, and which were considered and approved by

the City as part of the Contract award process. In this event, taxes shall be identified as a separate line item in Contractor's invoices.

20. **FEDERAL EXCISE TAXES:** The City is exempt from paying certain Federal Excise Taxes and will furnish an exemption certificate upon request.
21. **FUEL CHARGES:** Contractor at its own expense is liable for all fuel costs related to performance. No fuel surcharges will be accepted or paid by City.
22. **DISCOUNTS:** If the Contract provides for payment discounts, payment discounts will be computed from the later date of the following: (a) when correct invoice is received by the City; or (b) when acceptable materials and/or materials were received by City.
23. **AMOUNTS DUE TO THE CITY:** Contractor must be current and remain current in all obligations due to the City during performance. Payments to Contractor may be offset by any delinquent amounts due to City or fees and charges owed to City under this Contract.
24. **OFAC:** No City payments may be made to any person in violation of Office of Foreign Assets Control regulations, 31 C.F.R. Part 501.

SERVICES

25. **INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor for purposes of all laws, including but not limited to the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Immigration and Naturalization Act; Arizona revenue and taxation, workers' compensation, and unemployment insurance laws.
26. **CONTROL:** Contractor shall be responsible for the control of the work.
27. **WORK SITE:** Contractor shall inspect the work site and notify the City in writing of any deficiencies or needs prior to commencing work.
28. **SAFEGUARDING PROPERTY:** Contractor shall be responsible for any damage to real property of the City or adjacent property in performance of the work and safeguard the worksite.
29. **QUALITY:** All work shall be of good quality and free of defects, performed in a diligent and professional manner.
30. **ACCEPTANCE:** If work is rejected by the City due to noncompliance with the Contract, The City, after notifying Contractor in writing, may require Contractor to correct the deficiencies at Contractor's expense, or cancel the work order and pay Contractor only for work properly performed.

INSPECTION, RECORDS, ADMINISTRATION

31. **RECORDS:** The City shall have the right to inspect and audit all Contractor books and records related to the Contract for up to five (5) years after completion of the Contract.

32. **RIGHT TO INSPECT BUSINESS:** The City shall have the right to inspect the place of business of the Contractor or its subcontractor during regular business hours at reasonable times, to the extent necessary to confirm Contract performance.
33. **PUBLIC RECORDS:** This Contract and any related materials are a matter of public record and subject to disclosure pursuant to Arizona Public Records Law, A.R.S. § 39-121 et seq. If Contractor has clearly marked its proprietary information as “confidential”, the City will endeavor to notify Contractor prior to release of such information.
34. **CONTRACT ADMINISTRATION:** Contractor will be required to participate in the City’s Contract Administration Process. Contractor will be closely monitored for contract compliance and will be required to promptly correct any deficiencies.

INDEMNIFICATION, INSURANCE

35. **GENERAL INDEMNIFICATION:** Contractor shall indemnify, defend and hold harmless the City, its council, boards and commissions, officers, employees from all losses, claims, suits, payments and judgments, demands, expenses, attorney’s fees or actions of any kind resulting from personal injury to any person, including employees, subcontractors or agents of Contractor or damages to any property arising or alleged to have arisen out of the negligent performance of the Contract, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. This indemnification provision shall survive termination or expiration of the Contract. This indemnification clause shall not apply, if a different indemnification clause is included in the City’s Specific Terms and Conditions.
36. **INSURANCE:** Contractor shall maintain all insurance coverage required by the City, including public liability and worker’s compensation.
37. **INTELLECTUAL PROPERTY INDEMNIFICATION:** Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of Contract performance or use by the City of materials furnished or work performed under this Contract. Contractor shall promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City and its agents for alleged infringement, or alleged unfair competition resulting from similarity in design, trademark or appearance of goods, and indemnify the City against any and all expenses, losses, royalties, profits and damages, attorney’s fees and costs resulting from such proceedings or settlement thereof. This indemnification shall survive termination or expiration of the Contract.

CONTRACT CHANGES

38. **PRICE INCREASES:** Except as expressly provided for in the Contract, no price increases will be approved.
39. **COMPLETE AGREEMENT:** The Contract is intended to be the complete and final agreement of the parties.
40. **AMENDMENTS:** This Contract may be amended by written agreement of the parties.

41. **SEVERABILITY:** If any term or provision of this Contract is found by a court of competent jurisdiction to be illegal or unenforceable, then such term or provision is deemed deleted, and the remainder of this Contract shall remain in full force and effect.
42. **NO WAIVER:** Each party has the right insist upon strict performance of the Contract, and the prior failure of a party to insist upon strict performance, or a delay in any exercise of any right or remedy, or acceptance of materials or services, shall not be deemed a waiver of any right to insist upon strict performance.
43. **ASSIGNMENT:** This Contract may be assigned by Contractor with prior written consent of the City, which will not be unreasonably withheld. Any assignment without such consent shall be null and void. Unless expressly provided for in a separately executed Consent to Assignment, no assignment shall relieve Contractor (Assignor) from any of its obligations and liabilities under the Contract with respect to City. The Purchasing Director shall have authority to consent to an assignment on behalf of City.
44. **BINDING EFFECT:** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

EMPLOYEES AND SUBCONTRACTORS

45. **SUBCONTRACTING:** Contractor may subcontract work in whole or in part with the City's advance written consent. City reserves the right to withhold consent if subcontractor is deemed irresponsible and/or subcontracting may negatively affect performance. All subcontracts shall comply with the underlying Contract. Contractor is responsible for Contract performance whether or not subcontractors are used.
47. **NONDISCRIMINATION:** Contractor shall not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, disability, genetic information, veteran's status, pregnancy, familial status and represents and warrants that it complies with all applicable federal, state and local laws and executive orders regarding employment. In addition, Contractor shall comply with the City Code, Chapter 14-02 Civil Rights which prohibits discrimination based on sexual orientation, or gender identity or expression.
48. **DRUG FREE WORKPLACE:** The City has adopted a Drug Free Workplace policy 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 personnel shall abstain from use or possession of illegal drugs while engaged in performance of this Contract.
49. **IMMIGRATION LAWS:** Pursuant to A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all state and federal Immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty"). A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City. The City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on this Contract to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Contractor

agrees to assist the City in any random verification performed. 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).

DEFAULT AND TERMINATION

- 50. TERMINATION FOR DEFAULT:** Prior to terminating this Contract for a material breach, the non-defaulting party shall give the defaulting party written notice and reasonable opportunity to cure the default, not to exceed thirty (30) days, unless a longer period of time is granted by the non-defaulting party in writing. In the event the breach is not timely cured, or in the event of a series of repeated breaches, the non-defaulting party may elect to terminate this Contract by written notice, which shall be effective upon receipt. In the event of default, the parties may execute all remedies available at law, in addition to the remedies provided in this Contract.
- 51. CITY REMEDIES:** In the event of Contractor's default, City may obtain required materials and/or services from a substitute contractor, and Contractor shall be liable to the City to pay for the costs of such substitute service. City may deduct or offset the cost of substitute service from any balance due to Contractor, and/or seek recovery of the costs of substitute service against any performance security, and/or collect any liquidated damages provided for in the Contract. Remedies herein are not exclusive.
- 52. CONTRACTOR REMEDIES:** In the event of City's default, Contractor may pursue all remedies available at law, except as provided for herein.
- 53. SPECIAL DAMAGES:** In the event of default, neither party shall be liable for incidental, special, or consequential damages.
- 54. TERMINATION FOR NONAPPROPRIATION OF FUNDS:** The City may terminate all or a portion of this Contract due to budget constraints and non-appropriation of funds for the following fiscal year, without penalty or liability to Contractor.
- 55. TERMINATION FOR CONVENIENCE:** Unless expressly provided for otherwise in the Contract, this Contract may be terminated in whole or part by the City for convenience upon thirty (30) days written notice without further penalty or liability to Contractor. If this Contract is terminated, City shall be liable only for payment for satisfactory materials and/or services received and accepted by City before the effective date of termination.
- 56. TERMINATION DUE TO INSOLVENCY:** If Contractor becomes a debtor in a bankruptcy proceeding, or a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Contractor under federal bankruptcy law or any state insolvency law, Contractor shall immediately provide the City with a written notice thereof. The City may terminate this Contract, and Contractor is deemed in default, if the Contractor 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 ability to perform under the Contract.
- 57. PAYMENT UPON TERMINATION:** Upon termination of this Contract, City will pay Contractor for satisfactory performance up until the effective date of termination. City shall make final payment within thirty (30) days from receipt of the Contractor's final invoice.

58. **CANCELLATION FOR GRATUITIES:** The City may cancel this Contract at any time, without penalty or further liability to Contractor, if City determines that Contractor has given or offered to give any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with award or performance of the Contract.
59. **CANCELLATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511):** The City may cancel this Contract within three (3) years after its execution, without penalty or further liability to Contractor.

MISCELLANEOUS

60. **ADVERTISING:** Contractor shall not advertise or publish information concerning its Contract with City without the prior written consent of the City.
61. **NOTICES:** All notices given pursuant to this Contract shall be delivered at the addresses as specified in the Contract, or updated by Notice to the other party. Notices may be: (a) personally delivered, with receipt effective upon personal delivery; (b) sent via certified mail, postage prepaid, with receipt deemed effective four (4) days after being sent; (c) or sent by overnight courier, with receipt deemed effective two (2) days after being sent. A Notice may be sent by email as a secondary form of notice.
62. **THIRD PARTY BENEFICIARIES:** This Contract is intended for the exclusive benefit of the parties. Nothing herein is intended to create any rights or responsibilities to third parties.
63. **GOVERNING LAW:** This Contract shall be construed in accordance with the laws of Arizona.
64. **FORUM:** In the event of litigation relating to this Contract, any action at law or in equity shall be filed in Coconino County, Arizona.
65. **ATTORNEYS' FEES:** If any action at law or in equity is necessary to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, professional fees and expenses.
66. **NO BOYCOTT OF ISRAEL:** Pursuant to A.R.S. §§ 35-393 and 35-393.01, the parties certify that they are not currently engaged in and agree, for the duration of the Contract, not to engage in a boycott of Israel.

EXHIBIT C

SPECIAL TERMS AND CONDITIONS

1. **WARRANTY:** Contractor expressly warrants that all goods and services covered by this Contract shall conform to the specifications, drawings, samples or other description in this Invitation for Bids, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect and that goods and services of Contractor's design be free from defect in design. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor agrees to replace or to correct defects of any goods or services not conforming to the foregoing warranty promptly, without any expense to the City including shipping and transportation costs, when notified of such nonconformity by the City. In the event of failure by Contractor to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the City thereby.

Contractor's product, service, and facilities shall be in full compliance with all applicable federal, state and local laws, statutes, ordinances, regulations, and standards, regardless of whether or not they are expressly referred to by the City.

Unless otherwise specified, the minimum warranty period shall be one (1) year from Contractor's installation or delivery of the warranted item. Contractor shall provide the City with a copy of the complete manufacturer's warranty information.

Contractor guarantees that the equipment offered shall be warranted as follows:

- A. Contractor must send a copy of the warranty explaining clearly what parts and labor are warranted and the time period involved. Contractor is to state the name of the firm where warranty work is to be performed and the maximum number of hours to respond to a service request by a qualified technician arriving at the City of Flagstaff shop.
2. **COMPLIANCE WITH THE SCOPE OF WORK:** It is agreed that Contractor shall be fully responsible for making any corrections, replacements, or modifications necessary for specification or legal compliance. Contractor agrees that if the product or service offered does not comply with the terms and conditions of this Contract, the Purchasing Director has the right to cancel at any time with full refund within sixty (60) calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any incidental and/or consequential damages suffered by the City.
 3. **INTENT:** These specifications cover the furnishing of the latest production model that has been proven and in field service for a minimum time period of one (1) year. All components are to be manufacturer's standard and no prototype units will be considered.

These specifications require the doing of all things necessary, or proper for, or incidental to the furnishings and delivery of said unit and associated equipment. All things not expressly mentioned in these specifications but involved in carrying out their intent are required by these specifications, and the Contractor shall perform the same as though they were specifically mentioned, described, and delineated.

The Contractor is to submit a user list with in-service date, phone number, and person to contact that are currently using the equipment offered in this bid for consideration, so that if necessary, the City can view the equipment in operation.

4. **CONTRACT TYPE:** Firm Fixed Price.
5. **CONTRACT RENEWAL:** The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date.
6. **SUBSEQUENT PURCHASES:** The City, with the consent of the successful Contractor(s), reserves the right to purchase additional items as listed in this bid, if Contractor is willing to offer the same terms and conditions as submitted in this bid, for a period of twelve (12) months from the date of City Council approval.
7. **MISCELLANEOUS CHARGES:** If any other charges are applied to the unit, such charges shall be as stated on the bid form under "Miscellaneous Charges". No other charges shall be considered later.
8. **LIQUIDATED DAMAGES:** Liquidated damages shall be charged when the Contractor fails to deliver the specified equipment, fully operational as per the stated delivery date as provided on the Bid Form and as per the City of Flagstaff's delivery terms. Liquidated damages will be assessed at the rate of \$200 per calendar day to commence after the agreed upon delivery date has expired.
9. **CONTRACT ADMINISTRATOR:** The Contract Administrator for the City shall be the Flagstaff Police Department Support Services Supervisor or designee. The Contract Administrator shall audit billings, approve payments, establish schedules, and generally be responsible for overseeing execution and the delivery of this Contract.
10. **INSPECTION AND PERFORMANCE TESTS:** Inspection of workmanship, materials, design and performance of the unit may be made at the Contractor's factory at the sole discretion of the City. The City will pay all expenses of its inspectors. However, the entire unit specified shall be subject to final inspection and acceptance by the City upon delivery at the City facility designated on the purchase order. The complete unit will be required to undergo a performance test before final acceptance. Any defects or failure to comply with any requirements of these specifications shall be immediately remedied by the Contractor at the Contractor's own expense before final acceptance.
11. **ACCESSIBILITY OF COMPONENTS:** All parts of the unit and auxiliary equipment shall be easily accessible for inspection, operation, and maintenance. All components shall be readily removable and replaceable. These features are considered mandatory and the unit will be closely inspected to assure conformance with this requirement.

If, in the opinion of the City, any part or component is not readily accessible, or removable, the City may require the Contractor to correct the deficiencies at the Contractor's own expense, before acceptance.

12. **MARKING OF CONTROLS:** All operating controls, light switches, and controls for auxiliary equipment that may be installed on the vehicle, or at any other location on the unit shall be clearly and permanently marked and identified by means of identification plates.

13. **RECOMMENDED SPARE PARTS:** The Contractor shall furnish with each service manual a list of recommended spare parts. The list shall include all necessary data for ordering the parts. Parts furnished by other manufacturers shall be identified by the ordering data of the actual manufacturer.
14. **ACCEPTANCE:** Each item delivered shall be subject to a complete inspection prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Thirty (30)-calendar days shall be allowed for this process. If delivered equipment is returned to the Contractor prior to acceptance for any reason, additional periods of thirty (30)-calendar working days shall be allowed for inspection when subsequent deliveries occur. Any defects or failures to comply with any requirements of these specifications shall be immediately remedied; otherwise liquidated damages would be applicable as referenced herein.
15. **WEATHER CONDITIONS:** This product will be used at elevations from near sea level to 10,000 feet and ambient temperatures as high as 120 degrees and as low as – 40 degrees F. The product shall remain operational under these conditions. Each component of the complete unit shall be adequate for and compatible with all structural and performance demands placed upon it as a part of the complete unit.
16. **BRAND NAMES:** If Solicitation refers to a specific manufacturer, brand, make or catalog designation, this means the City is seeking materials with the same or equal character, quality, performance, or features. If a vendor is submitting an offer to furnish materials with a different manufacturer, brand, make or catalog designation, then the vendor shall submit complete data and information with respect to the materials being offered and how it differs from the specific manufacturer, brand, make or catalog designation referenced in the Solicitation. If a vendor does not provide data and information, then the vendor shall be deemed to be making an offer to provide the exact material referenced in the Solicitation. The City reserves the right to determine what is an equal.
17. **OPERATION MAINTENANCE AND REPAIR DATA:** Prior to the delivery of the unit and associated equipment, the Proposer shall forward directly to the City, operating, maintenance repair manuals. All manuals shall be in the form of neatly bound books, with durable covers and shall be properly identified with manufacturer's name, model and serial number of the equipment.

The operating and maintenance or shop manual shall be the latest manufacturer's handbook covering in detail the recommended operating maintenance and service procedures.

The repair or shop manual shall include detailed drawings, schematics, electrical and hydraulic or other piping diagrams and complete parts lists for all components of the unit and associated equipment.

Where components or equipment of several manufacturers' have been used in assembling the unit, the manuals shall include operating, maintenance repair and parts lists of all manufacturers' covering all of the components.

The manuals shall be furnished in sets. Each set (four sets total) shall include an operator's manual, parts catalog and shop repair manual. The books and manuals shall be delivered to the City of Flagstaff Fleet Superintendent at the time the equipment is delivered. Delivery shall not be considered complete and payment shall not be made until all required manuals and books are received. Two sets of all manuals may be submitted in CD format.

18. **SITE VISIT:** At any time during the term of the Contract, the City, at their sole option, may request a visit and inspection of the Contractor's facility to ensure that the Contractor has the necessary equipment and qualifications to perform the requirements of this Invitation for Bid.

EXHIBIT D

INSURANCE REQUIREMENTS

INDEMNIFICATION: Contractor (as "indemnitor") agrees to indemnify, defend and hold harmless the City (as "indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the acts or omissions of indemnitor, its officers, officials, agents, employees or volunteers relating to this Contract.

INSURANCE: Contractor shall procure and maintain until all of its obligations under this Contract have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property that may arise from or in connection with the purchase and or use of the commodity.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect contractor from liabilities that might arise out of the performance of the work under this Contract by contractor, its agents, representatives, employees or sub-contractors and contractor is free to purchase such additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. Commercial General Liability - Occurrence Form

(Form CG 0001, ed. 10/93 or any replacements thereof)

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$ 50,000
Medical Expense (Any one person)	Optional

2. Automobile Liability - Any Auto or Owned, Hired and Non-Owned Vehicles

(Form CA 0001, ed. 12/93 or any replacement thereof.)

Combined Single Limit Per Accident for Bodily Injury and Property Damage	\$1,000,000
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3. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$ 500,000
Disease-Each Employee	\$ 500,000
Disease-Policy Limit	\$ 500,000

B. SELF-INSURED RETENTIONS/DEDUCTIBLES: Any self-insured retentions and deductibles shall be declared to and approved by the City.

C. OTHER INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage's:

a. Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, or employees shall be in excess to the coverage of contractor's insurance and shall not contribute to it.

b. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

c. Coverage provided by contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

d. Contractor's insurance shall contain broad form contractual liability coverage.

2. Workers' Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, agents, employees and volunteers for losses arising from contractor's operations, work or products that are the subject of this Contract.

D. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to: Jessica Bryson, Senior Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001 and shall be sent by certified mail, return receipt requested.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect contractor from potential insurer insolvency.

F. VERIFICATION OF COVERAGE: Contractor shall furnish the City with Certificates of Insurance (ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the Certificate of Insurance.

All Certificates of Insurance shall be received and approved by the City before work commences. Failure to maintain the insurance policies as required by this Contract or to provide timely evidence of renewal shall be a material breach of this Contract.

All Certificates of Insurance required by this Contract shall be sent directly to: Jessica Bryson, Senior Procurement Specialist, Purchasing Division, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001. A description of the commodity is to be noted on the Certificate of Insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Contract at any time.

G. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall have prior approval from the City's Risk Manager, whose decision shall be final. Such action shall not require a formal contract amendment but may be made by administrative action.