



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: May 15, 2018

* = Mandatory, information must be provided

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

Empire Southwest LLC D.B.A. Empire Machinery (Headquarters: Mesa, AZ)

***Project Title/Description:**

New 2018 Caterpillar 140M3 AWD Motor Grader (1)

***Purpose:**

Award: Purchase Order No. PO-PO-18-80. This contract is for a one-time award in the not-to-exceed amount of \$306,941.10 (including sales tax). Administering Department: Fleet Services.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.010, Cooperative procurement authorized, the Procurement Director authorized Requisition No. 18-138 to utilize the City of Tucson Contract No. 161534, which was awarded through competitive procedures reasonably similar to those set forth by Pima County Procurement Code. Fleet Services is requesting permission to take advantage of the trade in option of a 1993 GR10 Caterpillar 140G Motor Grader with a trade in value of \$40,000.00.

PRCUID No. 289870

Attachment: Purchase Order

***Program Goals/Predicted Outcomes:**

To replace an existing Caterpillar All-Wheel Drive Motor Grader (has exceeded its useful life) with a New 2018 Caterpillar 140M3 AWD Motor Grader. Our current inventory of Motor Graders are manufactured by Caterpillar. The operators are familiar with the operations of the Caterpillar Motor Grader, which will allow for a quick transition.

***Public Benefit:**

To acquire a New 2018 Caterpillar 140M3 AWD Motor Grader for Pima County Transportation Department. The equipment is primarily used for road maintenance and other County Transportation projects.

***Metrics Available to Measure Performance:**

Measure the amount of operating hours performed using the All-Wheel Drive Motor Grader for road maintenance and other County projects. Additional metric "Downtime monitoring" captures the time New 2018 Caterpillar 140M3 AWD Motor Grader is not available due to repairs or services.

***Retroactive:**

No.

To: CoB - 5.2.18
Ver. - 1
pgs. 19

(1)

MAY 02 10 02 14 PM '18 P051 K06 00 / 20 / 50

AR3

Contract / Award Information

Document Type: PO Department Code: PO Contract Number (i.e., 15-123): 18-80

Effective Date: 05/15/2018 Termination Date: 06/30/2018 Prior Contract Number (Synergen/CMS):

Expense Amount: \$* 306,941.10 Revenue Amount: \$

*Funding Source(s) required: Fleet Services Ops

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

*Is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Effective Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense or Revenue Increase Decrease Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Effective Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? Yes No If Yes \$ %

*Match funding from other sources? Yes No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Maria Julia Canizales *in* Division Manager: *[Signature]* 4/26/18

Department: Procurement *May 2 4/26/18* Telephone: 520-724-8167

Department Director Signature/Date: *[Signature]* 4/26/18

Deputy County Administrator Signature/Date: *[Signature]* 5-2-18

County Administrator Signature/Date: *[Signature]* 5/2/18

(Required for Board Agenda/Addendum Items)



PURCHASE ORDER

PIMA COUNTY, ARIZONA

PLEASE REFERENCE THIS PO NUMBER ON ALL INVOICES

PO No:1800000000000000080

PO Version: 1

Page: 1 of 2

S H I P T O	PIMA COUNTY FLEET SERVICES - MISSION RD FS-1291-100A 1291 S MISSION RD TUCSON AZ 85713 Requested By: CECILIA MURCH Dept: PO Phone: 5207245917
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B I L L T O	PIMA COUNTY FINANCE & RISK MANAGEMENT - ACCOUNTS PAYABLE PO BOX 791 TUCSON AZ 85701
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V E N D O R	EMPIRE SOUTHWEST LLC DBA: Empire Machinery PO BOX 29879 PHOENIX AZ 85038-9879	Contact: CLINTON SWAPP Phone: 520-746-8213 Email: clinton.swapp@empire-cat.com Terms: 0.00 % Days: 30
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Issued By: MARIA CANIZALES Issued Phone: 5207248167 Issued Email: maria.canizales@pima.gov Issued Date: 04-16-2018 PO Description New 2018 Caterpillar 140M3 AWD Motor Grader Modification Reason This Contract is for a one-time award in the not-to-exceed amount of \$306,941.10. Attachment: Cooperative Procurement Agreement.	Total: \$306,941.10 FOB: FOB Dest, Freight Prepaid Shipping: Vendor Method Delivery: Standard Ground
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This Purchase Order incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All transactions and conduct are required to conform to these documents.



PURCHASE ORDER DETAILS

PO No:1800000000000000080

PO Version: 1

Page: 2 of 2

Line	Description			Line Subtotal			Delivery Date
1	140M3 AWD Motor Grader			\$284,600.00			06-25-2018
	Quantity	UOM	Unit Price	Stock Code	VPN	MPN	
	1.00000	EA	\$284,600.00				

**Pima County Procurement Department
Administering Department: Fleet Services**

Project: New 2018 Caterpillar 140M3 AWD Motor Grader

**Contractor: Empire Southwest, LLC
D.B.A. Empire Machinery
PO Box 29879
Phoenix, AZ 85038-9879**

Amount: \$306,941.10

Funding: Fleet Services Ops

Pima County Contract No.: PO-PO-18-80

CONTRACT

NO. PO-PO-18-80

AMENDMENT NO. _____

This number must appear on all invoices, correspondence and documents pertaining to this contract.

COOPERATIVE PROCUREMENT AGREEMENT

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and Empire Southwest, LLC, D.B.A. Empire Machinery ("Contractor")
- 1.2. Authority. Pima County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements. Pima County has entered into such an agreement with City of Tucson (Pima County sequence no. 20051040587).
- 1.3. Contract.
 - 1.3.1. City of Tucson entered into a contract (Contract No. 161534) for specified goods and services with Caterpillar, Inc., which is currently in effect (the "City of Tucson Contract"). The City of Tucson Contract is incorporated into this Contract by reference.
 - 1.3.2. Section 1.4 of the City of Tucson Contract provides that another governmental entity with which City of Tucson has a cooperative purchasing agreement may, with Contractor's approval, purchase products and services at the same prices and under the same terms as in the City of Tucson Contract.

2. Term.

Original Term. This Contract is effective for a six-week period commencing on 05/15/18 and terminating on 06/30/2018.

3. **Scope of Services**. Contractor will provide a new 2018 Caterpillar 140M3 AWD Motor Grader as specified in Exhibit A: Customer Purchase Agreement (1 page), Exhibit B: Guaranteed Costs (1 page), Exhibit B-1: Empire Guaranteed Buy Back and Return Conditions (3 pages) and Exhibit C: Guaranteed Maximum Cost of Repairs (2 pages), under the terms and conditions of the City of Tucson Contract as modified by this Contract. The terms and conditions set forth in this Contract control over any inconsistent provisions in the City of Tucson Contract.

3.1. Contractor must maintain a local factory authorized maintenance facility within the Tucson Metropolitan area. Service hours shall be from 8:00 A.M. to 5:00 P.M., Monday through Friday or have specific agreements in force with a third party to provide local maintenance. If applicable, a document showing evidence of the third party agreement to provide necessary maintenance support shall be provided upon request.

3.2. The following documents are required upon delivery of the new 2018 Caterpillar 140M3 AWD Motor Grader:

3.2.1. Contractor must submit Manufacturer Statement of Origin (M.S.O.) and serial number shall not be altered in any way, which must include the odometer statement, if applicable. Unless otherwise ordered in writing, the M.S.O. shall show the owner/purchaser of the equipment as:

**Pima County Board of Supervisors
1291 S Mission Road
Tucson, AZ 85713**

3.2.2. Contractor must submit two (2) CD's or Thumb drives, or website to enable County to access the following:

- a. Maintenance-Overhaul (shop) manuals
- b. Operator's manuals
- c. Service Manuals including Wiring Diagrams
- d. Manuals for auxiliary equipment
- e. Four (4) sets of keys

3.2.3. Contractor will provide authorized trainers to train County staff on the operation and service of the new 2018 Caterpillar 140M3 AWD Motor Grader at no additional cost to the County. Fleet will contact Contractor to schedule training within thirty (30) days of receipt of equipment.

3.2.4. Contractor must deliver an unaltered invoice specifying the purchase order number and the serial number for the new 2018 Caterpillar 140M3 AWD Motor Grader on or before June 25, 2018 to Pima County Fleet Services Department at 1291 S. Mission Road, Tucson, AZ 85713. If Contractor fails to meet this deadline, County will not be obligated to receive equipment and will not incur any charges or fees.

4. **Not-to-Exceed Amount.** Purchases under this Contract by the County may not exceed \$306,941.10 (the "NTE Amount").

5. **Indemnification Clause.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment

costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

6. **Insurance Requirements.** Contractor will procure and maintain at its own expense insurance policies (the "Required Insurance") satisfying the below requirements (the "Insurance Requirements") until all of its obligations under this Contract have been met. The below Insurance Requirements are minimum requirements for this Contract and in no way limit Contractor's indemnity obligations under this Contract. The County in no way warrants that the required insurance is sufficient to protect the Contractor for liabilities that may arise from or relate to this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the Insurance Requirements.

6.1. Insurance Coverages and Limits: Contractor will procure and maintain, until all of its obligations have been discharged, coverage with liability limits not less than those stated below. Coverage must be placed with insurers acceptable to the County with A.M. Best rating of not less than A- VII, unless otherwise approved by the County.

6.1.1. Commercial General Liability (CGL) – Occurrence Form with limits not less than \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include bodily injury, property damage, personal/advertising injury and products-completed operations.

6.1.2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident.

6.1.3. Workers' Compensation and Employers' Liability – Arizona Statutory requirements and Employer's Liability coverage with policy limits of \$1,000,000 and each accident and each person – disease.

6.2. Additional Coverage Requirements:

6.2.1. Claims Made Coverage: If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

6.2.2. Additional Insured Endorsement: The General Liability and Business Automobile Liability shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

6.2.3. Subrogation Endorsement: The General Liability, Business Automobile Liability, Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

6.2.4. Primary Insurance Endorsement: The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

- 6.3. **Notice of Cancellation:** Contractor must notify Pima County, no less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium.
- 6.4. **Verification of Coverage:**
- 6.4.1. Contractor shall furnish Pima County with certificates of insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.
 - 6.4.2. All certificates and endorsements, as required by this written agreement, are to be received and approved by Pima County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
 - 6.4.3. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the Pima County project or contract number and project description on the certificate. Pima County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
 - 6.4.4. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
- 6.5. **Approval and Modifications:** The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing.
7. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
8. **Compliance with Laws.** Contractor will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that any subcontractors will be appropriately licensed. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.
9. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
10. **Non-Appropriation of Funds.** Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under

this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

11. **Public Information.** Pursuant to A.R.S. § 39-121 et seq. all documents submitted to County by Contractor, including but not limited to pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors. If Contractor reasonably believes that some of those records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL." In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

12. Legal Arizona Workers Act Compliance.

- 12.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 12.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 12.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 12.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 24 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract." CONTRACTOR hereby warrants that it will at all times during the term

of this Contract comply with all federal immigration laws applicable to CONTRACTOR's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR will further ensure that each subcontractor who performs any work for CONTRACTOR under this contract likewise complies with the State and Federal Immigration Laws.

13. **Israel Boycott Certification.** Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.
14. **Written Orders.** County will order the under this Contract by issuing a purchase order document. The purchase order document will be furnished to Contractor via e-mail or telephone.
15. **Amendments.** The County may extend or revise this Contract by notifying Contractor in writing of the change, which notice will be in the form of a revised "Master Agreement." If Contractor does not object in writing to the proposed changes within ten (10) calendar days after receipt of the notice, Contractor will be deemed to have accepted the changes, and the revision will be binding on the parties, effective as of the date the notice was issued. If Contractor objects to one or more of the changes, then the proposed changes will be deemed to be ineffective.
16. **Invoice Submittal.** Invoices are to be sent to:

Pima County Finance & Risk Management- Accounts Payable
P.O. Box 791
Tucson AZ, 85701
17. **Notices.** Notices regarding this Agreement should be addressed to:

Maria Julia Canizales, Procurement Officer
Pima County 130 W Congress 3rd Floor, Tucson, AZ 85701
520-724-8167, maria.canizales@pima.gov

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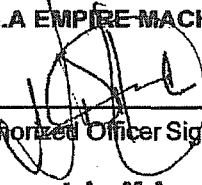
IN WITNESS WHEREOF, the parties have approved this Cooperative Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

APPROVED:

Chairman, Board of Supervisors

Date: _____

EMPIRE SOUTHWEST, LLC
D.B.A EMPIRE MACHINERY



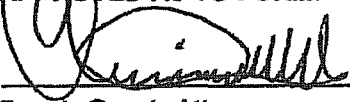
Authorized Officer Signature

John Holms
Vice President and CFO

Printed Name and Title

Date: 4-26-2018

APPROVED AS TO FORM:



Deputy County Attorney

CHRISTOPHER STRAUB

Date

Exhibit A: Customer Purchase Agreement (1 page)



Account Manager: Clinton Swapp

PSR:

DBS Agreement #: S71340 SEE NOTES

Customer #: 0096474

Date: 2/14/2018

Customer Name: PIMA COUNTY FLEET SERVICES

Contact: Bob Charlton

Contact Phone: 520-724-2614

Address: 1291 S MISSION RD

City/State/ZIP: TUCSON AZ 85713-1312

Phone: 520-740-2670

Invoicing Customer: PIMA COUNTY FLEET SERVICES - 0096474G

PO #:

Terms: On Account - Customer PO

Special Payment Instructions: For Wire Instructions call Empire Credit Dept. at 480.633.4523

Please include the following information with your payment or wire:

Invoicing Customer: PIMA COUNTY FLEET SERVICES

Customer Number: 0096474

Agreement Number: S71340 SEE NOTES

Serial Number(s): N9J00749

Delivery Location: 1301 S Mission Road

City/State: Tucson, AZ

F.O.B: Client's Yard

Job Site Location: Empire Tucson

Bond #:

Cust. Required Delivery Date: 6/25/2018

Freight: Freight will be provided by ETCO and paid for by: Empire Common

Equipment						
Serial Number	Year	Model	ID #	Inv Make	Description	Sell Price
N9J00749	2018	140M3AWDB	E140434	CATERPILLAR	140M3 AWD MOTOR GRADER 7 Yr 7000 Hr Premier	\$324,600.00

Trade-Ins								
Year	Make	Model	Serial Number	Rcvd ID Num	Description	Trade Value	Lien Amount	Net Trade-In
1993	CAT	140G	72V15639	<input type="checkbox"/>	Motor Grader	\$40,000.00	\$0.00	\$40,000.00

Sub Total: \$324,600.00

Trade In Value: (\$40,000.00)

State/County Sales Tax (Pima County 6.10%): \$17,360.60

City Sales Tax (Mesa 1.75%): \$4,980.50

Balance Due: \$306,941.10

TERMS: Machine sales payments are due Net 10; all others Net 30. Unless otherwise agreed in writing by a vice president of Empire Southwest, LLC ("Empire"), the purchase of goods (including, but not limited to, new and used equipment, attachments, parts and technology) or services from Empire will be governed solely by Empire's Terms and Conditions of Sales and Service (the "Sales and Service Terms"), which are available at www.empire-cat.com/salesserviceterms, and the rental of equipment from Empire will be governed solely by Empire's Rental Terms and Conditions (the "Rental Terms"), which are available at www.empire-cat.com/rentalterms, or such other successor websites at which Empire posts its Sales and Service Terms and its Rental Terms (collectively, the "Terms") from time to time. A hard copy of the Terms is available upon written request to terms.conditions@empire-cat.com. Empire's Terms are hereby incorporated by reference into this document and all other documents related to your purchase of goods or services from Empire or the rental of equipment from Empire. By purchasing goods or services from Empire or renting equipment from Empire, you agree to be bound by Empire's Terms exactly as written.

Any on-road heavy-duty diesel, alternative-diesel, or off-road diesel vehicle, operated in California, may be subject to the California Air Resources Board In-Use On-Road (Truck and Bus) or In-Use Off-Road Diesel Vehicle Regulations. It therefore could be subject to exhaust retrofit or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board websites at <http://www.arb.ca.gov/dieseltruck> for the Truck and Bus Regulation or <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm> for the Off-Road Regulation.

Exhibit B – Guaranteed Costs (1 page)

1. Guaranteed Repurchase Price

1. The Contractor guarantees a Minimum Repurchase Price (trade-in allowance or a minimum bid at public auction) in the amount of \$159,500.00 up to the first seven thousand (7,000) hours of operation as recorded by the hour meter or seven (7) years from the date of delivery of the equipment, whichever first occurs.
2. In determining the Guaranteed Maximum Cost of scheduled maintenance, and in the enforcement of the provision of the agreement, the following rules shall apply:
 - a. The guaranteed trade-in price on the equipment shall be allowed by the Seller in the event the County decides to purchase other new equipment from the Seller.
 - b. The minimum bid shall be made by the Seller at public auction in the event the County elects to auction the equipment.
 - c. In the event equipment, subject to the Repurchase Agreement, while in possession of the County is, by any casualty cause, either totally destroyed or partially damaged to the extent that the damage is beyond repair and is considered a total loss because of the cost of restitution, then the Seller is released from his obligation under the Guaranteed Repurchase provision of this agreement.
 - d. See Exhibit B-1: Empire Guaranteed Buy Back and Return Conditions (3 pages) for additional terms and conditions.

2. Total Machine Warranty:

Provide 100% field repair travel time and mileage coverage for minimum of the first twelve (12) months of the seven (7) year warranty period at no additional cost to Pima County. Provide 100% parts and labor total machine warranty coverage for seven (7) years or seven thousand (7,000) hours whichever comes first.

3. Loaner Replacement:

If All-Wheel Drive Motor Grader cannot be repaired within forty-eight (48) hours while under the manufacturer's standard warranty period a compatible All-Wheel Drive Motor Grader will be loaned to the County at no-charged including pick-up and delivery until the repairs can be completed and the loader is back up and fully functional.

**Empire Southwest, LLC**

1725 S. Country Club Dr.
Mesa, AZ 85210-6003
480.633.4300 tel

April 25, 2018

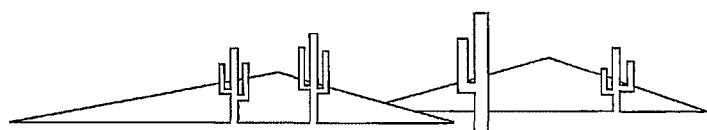
Pima County
1291 S. Mission Rd.
Tucson, AZ 85713-1312

Re: Empire Guaranteed Buy Back and Return Conditions
Caterpillar 140M3 AWD Motor Grader; Serial # 0N9J00749 (the "Equipment")

This letter is to confirm the terms of the agreement between Empire Southwest, LLC ("Empire") and Pima County ("Client") regarding the Equipment referenced above. Empire has agreed to give Client a Guaranteed Buy Back of \$159,500.00 on the Equipment at the end of 84 months from the date of delivery or 7,000 hours, whichever occurs first (the "Buy Back Period"). Any late charges, prepayment penalties, liens, or other fees owed to any lender are the responsibility of the Client and must be paid by Client prior to the return of the Equipment to Empire. The Equipment must be returned free of any and all liens and encumbrances. Client must give Empire 30 days advance written notice of its intent to return the Equipment to Empire and must, at its own cost, return the Equipment to an Empire location during Empire's normal business hours.

Client agrees that the Equipment must meet the following guidelines upon its return to Empire:

- Be returned in the same configuration, including all attachments, as when initially delivered.
- Be cleaned, and all switches, monitoring systems, gauges, control levers, pedals, radio (if applicable), mirrors, seats, insulation, and other components must be complete and in good working order.
- Be free from all oil, hydraulic, fuel, and coolant leaks.
- Be in good operating condition without mechanical defects.
- Have had all weld repairs completed by a certified welder using Caterpillar repair guidelines/specifications.



- Not have been subject to accidents, fire, theft, vandalism, or acts of God.
- Have been operated and maintained in accordance with Caterpillar Lubrication, Preventative Maintenance and Owner and Operator Manuals.
- Have been enrolled in a Caterpillar dealer Scheduled Oil Sampling (SOS) or comparable program for the entire Buy Back Period, and all fuels, lubricants, additives, and radiator water must be clean and in compliance with Caterpillar recommended standards.
- Have been operated only in the applications for which it was designed.
- All window glass must be clear and free from cracks and major pits; all window frames, doors, and weather stripping must be complete; and all service compartment covers and doors, fenders, and other flat metal or plastic must be in good working order and free from dents and cracks. No bent sheet metal.
- All standard Caterpillar and non-Caterpillar safety items must be complete and in good working order, including, but not limited to, the roll over protection (ROPS) and falling object protection (FOPS) systems, seat belts, steps, safety rails, grab irons, cat walks, fire suppression systems, and warning alarms.
- All electrical components, including, but not limited to, batteries, alternators, wiring harness, drive belts, lighting and air conditioning systems must be complete and in good working order.
- All repairs made to main structures, including, but not limited to, main frames, booms, sticks, and buckets must be accomplished in accordance with the factory recommended materials and repair procedures.
- All ground engaging tools, including, but not limited to, buckets, dozer blades, base cutting edges, rippers, scarifiers, drums, feet, tines, screeds, elevator flights, forks, and top clamps must have good structural integrity and have fifty percent (50%) minimum remaining life.
- All track and rubber belted Equipment must have a minimum of fifty percent (50%) remaining life on each and every component, including, but not limited to, track shoes, links, pins, bushings, idlers, bogies, sprockets, carrier rollers, and track rollers. Belts cannot have any cuts that extend into the cords and must not be missing guide blocks or grouser bars (lugs). Charges will be assessed for each component not meeting this requirement.
- All rubber tire Equipment must have a minimum of fifty percent (50%) remaining life of the original tread life of each tire. Recapped tires are not acceptable substitutes. All tires must be a matched set with the same tread type and pattern and have no significant cuts or chunking of the tread or side walls.

Empire retains the right to review any and all repair and maintenance records during the Buy Back Period. A full Equipment inspection may be conducted upon return of the Equipment. Client agrees it will be responsible for any damage other than normal wear.

Client may not assign this letter agreement without Empire's prior written consent.

Client will be invoiced for the parts and labor required to bring the Equipment into compliance with the above guidelines based on Empire's prevailing parts and labor rates. By signing below, Client confirms its acceptance of the terms of the Guaranteed Buyback outlined above.

Best Regards,

A handwritten signature in black ink, appearing to read "John Helms", is written over a circular stamp or seal that is partially obscured by the signature.

John Helms

Vice President | Chief Financial Officer

Exhibit C - Guaranteed Maximum Cost of Repairs (2 pages)

A. Guaranteed total maximum cost of repairs to County

1. The Contractor will be fully responsible for the cost of repairs, including parts and labor in excess of the amount listed below. The Guaranteed Maximum Cost of Repairs will apply for a period of six (6) years or seven thousand (7,000) hours of operation whichever comes first as recorded by the All-Wheel Drive Motor Grader hour meter or from the date of delivery. If the Guaranteed Maximum Cost of Repairs is exceeded, the Contractor shall reimburse the County for the excess amount. In determining the Guaranteed Maximum Cost of Repairs, the total cost of warranty repairs (parts & labor) will not be included. Successful respondent will meet with Fleet Services on an annual basis, if needed, to go over any overages and reimbursement to County.

Amount: \$4,500.00 per Grader for 6 years/7,000 hrs.

2. Prior to reaching the Guaranteed Maximum Cost of Repairs, the County shall be responsible for making repairs and the following rules shall apply:
 - a. In the event that the cost of repairs, including parts and labor for non-warrantable repairs only, as estimated by the County, is less than \$4,500.00 the County shall have the right to have the repairs made in the County's shop and need not give notice to the Seller prior to the repairs being made.
 - b. In computing the cost of repairs, all County labor costs will be charged at the County's then prevailing rate. Present rate is \$75.00 per hour, increases not to exceed 20% per year. Parts shall be charged for at actual cost and shall be purchased from the authorized dealer for the original equipment manufacturer, if possible.
 - c. If the cost of repairs, including parts and labor for non-warrantable repairs only, is in excess of \$4,500.00, as estimated by the County, the County shall submit to the Seller the estimated cost of the repairs, a detailed account of the work to be performed and an estimated time for completion of said work. The Seller shall then submit his estimate of cost and time for completion on the work to be performed. Such estimate shall be filed with the County no later than eight (8) normal workday hours after Seller's receipt of County's estimate. The County and the Seller will mutually agree on the shop in which the repairs are to be performed. The lower of the two estimates and the time required to make the repairs will be the primary factors in determining which shop will perform the repairs. If the repairs are to be performed in the County's shop, the cost of such repairs shall be computed on the same basis as that set forth in Paragraph 3.b. If the repairs are to be performed in the Seller's shop, the repairs will be billed to the County at the Seller's then prevailing rate. Pima County will transport the equipment to their shop.
 - d. County and Seller may agree that all or any portion of the repairs may be completed in service shops other than those of the County or the Seller, if it is deemed advantageous to both parties.
 - e. Should delivery of repair parts by Seller not be made to the County within five (5) working days following receipt of order, a daily charge of five-hundred dollars (\$500.00) shall be added to the cumulative cost of repairs for each working day over one (1) that the part is not delivered. Parts shall be ordered by part number. On the Seller's written presentation of verifiable information to Pima County: Parts that are not available because of strike, natural disaster or national emergency, the daily charge shall not be enforced.
 - f. The Seller may, at Seller's option avoid the penalty set forth above in Paragraph 3.e by supplying to the County, at no cost, a unit that is comparable to the All-Wheel Drive Motor Grader needing repair, until the County's equipment is restored to service.
 - g. The Seller shall have the right to examine repair cost records at any reasonable time. The County will maintain records reflecting pertinent repair cost information and will make these records available for examination in a timely manner.

3. Items covered by guaranteed maximum cost of repairs

The Seller will be fully responsible for the total cost of repairs, parts and labor as follows subject to the provisions previously set forth in this Section A.1.above.

a. Engine

Engine block and all internal and external components including air compressor, fuel, charging, cranking, exhaust, air intake, and cooling systems, radiator, fan and pulleys. Excludes batteries, filters, fan belts, hoses, anti-freeze and engine oil.

Exhibit C - Guaranteed Maximum Cost of Repairs (continued)

- b. Powertrain
Complete powertrain including all pumps, motors, gears, shafts, bearings, seals, discs, plates, torque converter (where used), drive couplings, case, including linkage and external lines excludes oil and filters.
- c. Drive Axles/Assemblies
Complete drive axle/assemblies including shafts, bearings, seals, chains, gears, cases, drive motors/assemblies, and air bag if equipped. Excludes lines, hoses and fluids.
- d. Brakes
Complete braking system including friction and steel disc, shoes, master and slave cylinders, valves and control linkage. Includes operating linkage and exterior airlines. Excludes fluids.
- e. Steering
All steering controls, including articulation, valves, cylinders, pins and bearings excludes oil.
- f. Front Axles
Complete axle assemblies including bushings, seals, bearings, shafts, hubs and wheel components. Excludes fluids.
- g. Controls
All operating and electrical controls, (solenoids and switches) including valves, cylinders, control linkage, and excludes oil and filter.
- h. Main Frame
Complete mainframe assembly.
- i. Hydraulic System
Complete hydraulic system including all pumps, valves, motors, and control linkages for all components and attachments. Excludes oil lines, hoses, filters and fluids.
- j. ROPS/Canopy
Complete assembly including heater, and excludes glass.
- k. Cab
Complete cab assembly including heater, and excludes glass.
- l. Gauges and Instrument
All gauges and instruments.
- m. Warning Devices
All warning devices including backup alarms, excludes strobe, beacons and lights.

A major component failure (Item 4, a thru i) contaminating fluids such as oil, hydraulic oil, anti-freeze etc. will be covered under this agreement.

B. Obligation of County

1. The equipment will be operated by County personnel in operations for which the equipment is designed and in a manner prescribed by the manufacturer.
2. The County will assume responsibility for costs of repairs due to fire, theft, accident, vandalism, acts of nature, or neglect or abuse directly caused by County personnel. Total repairs under such circumstances will not be included in computing the Guaranteed Total Cost of Repairs.
3. The County will assume, at its expense, all costs of fuel and fueling, engine and hydraulic oils, filters, belts, lubricants, greases, and the application thereof, anti-freeze, cutting edges, tires, hoses, batteries, lights, glass breakage, cleaning and repainting, and other items normally consumed in day-to-day operation.
4. The County will maintain equipment in accordance with manufacturer's and Seller's recommendations. The County reserves the right to use the same fuels, lubricants, and oils that it uses in other similar equipment unless specifically prohibited by the manufacturer's specifications. The County will have available a record of all scheduled maintenance performed. The Seller has the right to inspect equipment at any reasonable time and make recommendations for repairs, improved maintenance, etc. The County will follow such recommendations to the best of its ability.