SANTA FE COUNTY
PRICE AGREEMENT

THIS AGREEMENT is made and entered into by and between Santa Fe County, a New Mexico political subdivision of the County of New Mexico (hereinafter referred to as "the County), and Parts Plus of Santa Fe, a corporation authorized to do business in the County and State of New Mexico (hereinafter referred to as "the Contractor").

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. DEFINITIONS

A. "Using Department" shall mean a department or Elected Official's Office of Santa Fe County.

B. "Purchase Order" shall mean a fully executed Purchase Document issued by the Santa Fe County Purchasing Department that specifies the items to be provided by the Contractor under the terms of the Price Agreement.

C. Price Agreement means this indefinite quantity Price Agreement which requires the Contractor to furnish items to the using department which issues a purchase order.

D. Record Adjustment Date means a date within thirty calendar days of issuance of the Producers Price Index (Not Seasonally Adjusted)(referred to herein as "the PPI") by the U.S. Department of Labor.

2. GOODS TO BE PROVIDED

A. Good Listed on Attachment A. Certain departments of the County may issue orders for purchase of the items described herein. The item ordered must be listed on Attachment A to this Agreement. All orders issued hereunder must bear both an order number and the number of this Price Agreement.

B. Quantities. It is understood that this is an indefinite quantity price agreement and the County may order any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied, by either the County or the using department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items when ordered.

C. Specifications. Items furnished hereunder shall conform to the requirements of the specifications provided in the Information for Bidders, attached hereto as Attachment B. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), numbers(s), and price(s). Any items provided pursuant to this Price Agreement must meet or exceed the specifications.

D. Shipping and Billing Instructions.

1. The Contractor shall ship the items in accordance with the County's instructions. The Contractor shall enclose a packing list with each shipment listing the order number, Price Agreement number, and the commercial part number (if any) for each item. Unless otherwise designated by the County, the Contractor shall ship all products F.O.B. destination. Except for loss or damage directly attributable to the negligence of a procuring department, the Contractor shall bear all risk of loss or damage until products have been accepted by the using department. Destination charges shall be included in the product price.

2. The Contractor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery-by-messenger service). Such enhanced delivery charges shall be pre-paid by the Contractor and billed as a separate item at actual cost. The Contractor shall advise the procuring department of any enhanced delivery charges prior to the acceptance of the purchase order.

3. Whenever a Using Department does not accept any product and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also.

4. The Contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Using Department.

5. Unless otherwise agreed upon by the using department, the Contractor shall be responsible for the pick-up of returned items.

6. Time is of the essence for purposes of this Agreement. All damages resulting from late delivery shall be the responsibility of the Contractor. In the event of failure of the Contractor to deliver in accordance with this requirement, the Contractor shall be liable to the County for liquidated damages in the amount of $100.00 per order per each day the items are delivered late.

E. Delivery Tickets. The County's purchasing document number and the Contractor's name, Using Department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on each shipment that is not accompanied by a packing ticket.

F. Price. Prices listed in Attachment A for each item shall be the price for that item as adjusted as set forth below.

G. Periodic Price Adjustments.

1. The price of items shall be subject to adjustment (increase or decrease) pursuant to this subparagraph to account for fluctuations in the costs of the items that are the subject of this Price Agreement. Adjustments to the prices set forth on Attachment A shall occur within thirty days following issuance of the Bureau of Labor Statistics index Producers Price Index (Not Seasonally Adjusted)(generally referred to herein as "the PPI") by the U.S. Department of Labor, usually every four months. At that time (the record adjustment date), a price adjustment shall be calculated by adding or subtracting the materials price adjustment to the price of each item set forth on Attachment A. The materials price adjustment shall equal the sum of each adjustment, which shall be calculated in accordance with subsection (3) of this Section. Record price adjustment reflecting a *decrease* in the applicable PPI shall offset previous adjustments resulting from an increase in the applicable PPI. The adjustment shall serve to reduce the price of a particular item in the event that the sum of the adjustments equals a negative number or an increase in the price of an item in the event that the sum of the adjustments equals a positive number.

2. The baseline cost amount for each item set forth on Attachment A shall be as specified on Attachment A (e.g., the price bid for each item). This baseline cost amount shall be used to calculate the adjustments in accordance with subsection (3) of this Section.

3. A record adjustment shall be based on the PPI for that item. At the time of contracting, the specific PPI index for each item shall be identified and set forth herein on Attachment C. On the record adjustment date, record adjustments shall be calculated by multiplying the applicable baseline cost amount associated with the particular item by the record adjustment factor. The record adjustment factor shall be based on the percentage of change in the applicable PPI from the effective date of this Price Agreement (IC) as compared to the applicable PPI on the record adjustment date (IE), and shall be calculated in accordance with the following formula:

$$\text{Record Adjustment Factor} = IE/IC - 1.00$$

The parties shall execute a Contract Administration Memorandum setting forth each record adjustment within thirty (30) days after the applicable record adjustment date.

3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

A. Inspection. Final inspection and acceptance of all items ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.

B. Acceptance. In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the using department. Unless otherwise agreed upon between the using department and the Contractor, within thirty (30) days from the receipt of items, the using department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the using department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

C. Issuance of Orders. Only written, signed and properly executed purchase orders are valid under this Price Agreement.

D. Invoices. The Contractor may submit invoices for payment no more frequently than monthly. The Contractor's invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number, description of supplies or services, quantities, unit prices, extended totals and applicable taxes. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the Using Department and not the Central Purchasing Office.

E. Payment of Invoices. Upon written certification from the Using Department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at the rate of 1.5 % per month. Payment shall be made to the Contractor's designated mailing address.

F. Tax Note. Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and must be reported under the Contractor's federal and County tax identification number(s). If a using department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the using department shall provide the Contractor with written evidence of such exemption(s).

4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE PARTIES. The term of this Agreement shall be four (4) year(s), commencing from the last date on the signature page.

5. DEFAULT

A. The failure of the Contractor to perform shall create a default pursuant to this Price Agreement. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the County if the items fail to meet the requirements of this Price Agreement. The Contractor may be excused from performance under this Price Agreement if the Contractor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not limited to, acts of God or the public enemy, acts of the County or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the County shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the subcontractor to meet the required delivery schedule.

B. The County may to cancel all or any part of any resulting order without cost to the County if the Contractor fails to meet material provisions of the order; the Contractor shall be liable for any excess costs associated with such a default.

6. TERMINATION

A. For Convenience. This Price Agreement may be terminated by the County upon written notice to the Contractor thirty (30) days before the proposed date of termination. Notice of Termination of the Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS.

B. For Cause. Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

7. AMENDMENT

This Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the County Purchasing Manager. Amendments affecting prices are not allowed unless specifically provided for in the bid documents.

8. STATUS OF CONTRACTOR

The Contractor, and Contractor's agents and employees, are independent Contractors for the department and are not employees of the County of New Mexico. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of County vehicles, or any other benefits afforded to employees of the County of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

9. ASSIGNMENT

A. Neither this Price Agreement nor any orders placed under this Price Agreement, nor any interest therein, nor claim there under, shall be assigned or transferred by the Contractor, except as set forth in subparagraph 10(B) below or as expressly authorized in writing by the County purchasing manager. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Price Agreement.

B. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the County as to goods, services, and materials purchased in connection with this bid are hereby assigned to the County.

10. NON-COLLUSION

In signing this Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

11. INSPECTION OF PLANT

The County purchasing manager may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this Price Agreement.

12. COMMERCIAL WARRANTY

The Contractor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such items, and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this order. Contractor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability and fitness for a particular purpose.

13. CONDITION OF PROPOSED ITEMS

All proposed items are to be NEW and of most current production, unless otherwise specified.

14. RECORDS OF AUDIT

During the term of this agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the department, the County and State Auditor and other appropriate County and federal authorities. The department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the department to recover excessive or illegal payments.

15. APPROPRIATIONS

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

16. RELEASE

The Contractor, upon final payment of the amount due under this Agreement, releases the County, its Elected Officials, officers, employees, agents and attorneys, from and against all liabilities, claims and obligations whatsoever arising from or under this agreement. The Contractor agrees not to purport to bind the County of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

17. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the Using Department.

18. PRODUCT OF SERVICE: COPYRIGHT

All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of New Mexico and shall be delivered to the Using Department no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an

application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, meeting notes, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the Using Department at conclusion of the Agreement.

19. CONFLICT OF INTEREST

The Contractor warrants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

20. APPROVAL OF CONTRACTOR REPRESENTATIVES

The department reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the department, serving the needs of the County adequately.

21. SCOPE OF AGREEMENT, MERGER

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. NOTICE

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

23. EQUAL OPPORTUNITY COMPLIANCE

The Contractor shall abide by all federal and County laws, rules and regulations, and all applicable executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the governor of the State of New Mexico, the Contractor agrees to assure that no person shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Contractor is found to be not in compliance with these requirements during the life of this agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

24. INDEMNIFICATION

The Contractor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the department, its officers or employees.

25. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

26. INCORPORATION BY REFERENCE AND PRECEDENCE

This Agreement is derived from the Information For Bidders, Attachment B, including any written Addenda, and the Contractor's bid, Attachment A. In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Price Agreement in reverse chronological order; (2) the Price Agreement, including the scope of work; (3) the Information For Bidders including attachments thereto and addenda.

27. WORKER'S COMPENSATION

The Contractor shall comply with State laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated.

28. INVALID TERM OR CONDITION/SEVERABILITY

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

29. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

30. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION

A. The Contractor shall defend, at its own expense, the County from and against any claim that any item provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the department based upon Contractor's trade secret infringement relating to any items provided under this Agreement, the Contractor agrees to reimburse the County for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the department shall:

i. give the Contractor prompt written notice within 48 hours of any claim;
ii. allow the Contractor to control the defense of settlement of the claim; and
iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any item becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

i. provide the County the right to continue using the item and fully indemnifies the County against all claims that may arise out of the County's use of the item;

ii. replace or modify the item so that it becomes non-infringing;
or,

iii. accept the return of the item and refund an amount equal to the value of the returned item, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any item modified by the department to the extent such modification is the cause of the claim.

C. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

D. The Agreement paragraph titled "patent, copyright, trademark, and trade secret indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this Agreement shall also survive termination of this Agreement.

31. SURVIVAL

Each party agrees to protect confidential information and information identified as sensitive, proprietary, patent, copyright and/or trade secret data of the other. This protection will survive completion and/or termination of this Agreement and each party agrees not disclose this data unless under an order by a court of appropriate jurisdiction or the information becomes public knowledge.

32. NOTICES

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:
Santa Fe County Attorney's Office
102 Grant Avenue
PO Box 276
Santa Fe, NM 87501

To Contractor:
Parts Plus of Santa Fe
Attn: Adam Honegger, President
5900 Office Blvd. NE
Albuquerque, NM 87109

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by:

SANTA FE COUNTY:

Harry B. Montoya, Chairman
Santa Fe Board of County Commissioners

ATTEST:

Valerie Espinoza
Santa Fe County Clerk

Date

APPROVED AS TO FORM:

Stephen C. Ross
Santa Fe County Attorney

1-13-10
Date

FINANCE DEPARTMENT APPROVAL:

Teresa Martinez
Santa Fe County Finance Director

1/21/10
Date

PARTS PLUS OF SANTA FE:

(SIGNATURE)

1/29/10
Date

BY: Adam Honegger
(PRINT NAME)

ITS: President.
(PRINT TITLE)

FEDERAL TAX I.D. NUMBER: 85-0289119

ATTACHMENT A

Santa Fe County
Administrative Services Department
142 W. Palace Ave.
2nd Floor
Santa Fe, NM 87501

IFB #2010-0147-ASD/TRV

Please offer your best price, for each item as outline below. **The Bidders shall complete the following bid sheet in full, for Bid No. 2010-0147-ASD/TRV, including signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. Offers will be accepted until 10:00 am on the bid due date specified.

Item	Unit	Article and Description
1	%	Parts for maintenance and repairs will be provided at 66 % off list price (cost-plus is not acceptable).
2	%	Parts for body parts will be provided at 66 % off list price (cost-plus is not acceptable).
3	%	Parts for transmission will be provided at 66 % off list price (cost-plus is not acceptable).
4	%	Air, oil and fuel filters will be provided at 74 % off list price (cost-plus is not acceptable). WIX Premium Filters
5	%	Vehicle Batteries will be provided at 58 % off list price (cost-plus is not acceptable).
6	%	Lubricants will be provided at 62 % off list price (cost-plus is not acceptable).
7	%	Anti-Freeze will be provided at 62 % off list price (cost-plus is not acceptable).

8	%	Tires will be provided at N/A % off list price (cost-plus is not acceptable).
9	Cost	Tire Repairs for Standard sized tires will be provided at $ N/A .
10	Cost	Tire Repairs for Heavy Duty sized tires will be provided at $ N/A .
11	Cost	Mount & Balance for Standard sized tires will be provided at $ N/A .
12	Cost	Mount & Balance for Heavy Duty sized tires will be provided at $ N/A .
13	%	Automotive Glass will be provided at N/A % off list price (cost-plus is not acceptable).
14	Cost	Installation of Automotive Glass will be provided at $ N/A . .

Contractor's Name: Parts Plus Santa Fe

Contractor's Phone: (505)424-6300 **Fax #:** 505 341-7078

Signature of Authorized Contractor's Agent: [signature] / Adam Hanegger

Title: President.

Website info

partsplusnm.com

Login: ppnm7377

password: 3034