

AGREEMENT  
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A  
COOPERATIVE PURCHASING CONTRACT

This Agreement hereinafter (“Contract”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between the Town of Paradise Valley, Arizona, a municipal corporation, hereinafter designated as the “**Town**” and Loftin Equipment Co., Inc., an Arizona corporation hereinafter designated as the “**Contractor**.”

Recitals:

A. Contractor has contracted with the Houston-Galveston Area Council (H-GAC) to provide auxiliary power and backup generators, materials and/or equipment pursuant to the cooperative purchasing terms in Contract No. GE02-18, see attached **Exhibit A**, hereinafter the “Cooperative Purchasing Contract;” and

B. Pursuant to A.R.S. § 41-2631 et seq. and Town of Paradise Valley Resolution No. 1205, the Town has authority to utilize cooperative purchasing contracts of State of Arizona public agencies and public procurement units, including Mohave Educational Services Cooperative, Inc., and engage contractors under the terms thereof.

CONTRACTOR AND THE TOWN, FOR THE CONSIDERATION  
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment: auxiliary power and backup generators, including installation as described in the Cooperative Purchasing Contract for the specific products and services contained in the Proposal Dated May 2, 2018 attached hereto as **Exhibit B**, and incorporated herein by this reference (“Scope of Work”). As used in this Contract, all references to H-GAC shall mean the Town of Paradise Valley, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of the Town, as specified in **Exhibit C** attached hereto and incorporated herein by reference.

2. Completion of Work. The Contractor shall complete all work set forth in the Scope of Work on or before September 28<sup>th</sup>, 2018.

3. Payment. The Contract Fee is not to exceed \$182,650.00. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Contract.

5. Contract Term and Renewal. The term of this Contract shall commence upon the Effective Date and continue through December 31, 2018. The term of this Contract, including renewal periods, is limited to the end date of the Cooperative Purchasing Contract and the total length of the contract shall not exceed sixty (60) months. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract.

6. Certificates of Insurance. All insurance provisions of the Cooperative Purchasing Contract shall apply, including without limitation, the requirement to name the Town as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish the Town with Certificates of Insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s) as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

TOWN OF PARADISE VALLEY:

CONTRACTOR:

By: \_\_\_\_\_  
Kevin Burke  
Town Manager

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Andrew Miller  
Town Attorney

**EXHIBIT A**  
**COOPERATIVE PURCHASING CONTRACT**

See attached Houston-Galveston Contract for Auxiliary Power & Backup Generators,  
Contract No. GE02-18

A CONTRACT BETWEEN  
**HOUSTON-GALVESTON AREA COUNCIL**  
Houston, Texas  
AND  
**LOFTIN EQUIPMENT CO., INC.**  
Phoenix, Arizona

This Contract is made and entered into by the **Houston-Galveston Area Council of Governments**, hereinafter referred to as **H-GAC**, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, **Loftin Equipment Co., Inc.** hereinafter referred to as the **CONTRACTOR**, having its principal place of business at 2111 East Highland Avenue, Suite 255, Phoenix, Arizona 85016.

**ARTICLE 1:** **SCOPE OF SERVICES**

The parties have entered into a **Auxiliary Power & Backup Generators** Contract to become effective as of February 1, 2018, and to continue through January 31, 2020 (the "Contract"), subject to extension upon mutual agreement of the **CONTRACTOR** and **H-GAC**. **H-GAC** enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as **END USER**, for the purchase of **Auxiliary Power & Backup Generators** offered by the **CONTRACTOR**. The **CONTRACTOR** agrees to sell **Auxiliary Power & Backup Generators** through the **H-GAC** Contract to **END USERS**.

**ARTICLE 2:** **THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: **GE02-18**, including any relevant suffixes
4. **CONTRACTOR's** Response to Bid No: **GE02-18**, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3:** **LEGAL AUTHORITY**

**CONTRACTOR** and **H-GAC** warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4:** **APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5:** **INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of **H-GAC** or **CONTRACTOR**. No provision of this Contract or act of **H-GAC** in performance of this Contract shall be construed as making **CONTRACTOR** the agent, servant or employee of **H-GAC**, the State of Texas or the United States Government. Employees of **CONTRACTOR** are subject to the exclusive control and supervision of **CONTRACTOR**. **CONTRACTOR** is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6:** **END USER AGREEMENTS**

**H-GAC** acknowledges that the **END USER** may choose to enter into an End User Agreement with the **CONTRACTOR** through this Contract and that the term of said Agreement may exceed the term of the **H-GAC** Contract. However, this acknowledgement is not to be construed as **H-GAC's** endorsement or approval of the End User Agreement terms and conditions. **CONTRACTOR** agrees not to offer, agree to or accept from **END USER** any terms or conditions that conflict with or contravene those in **CONTRACTOR's** **H-GAC** contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between **CONTRACTOR** and any **END USER** which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that **CONTRACTOR** will no longer be able to enter into any new End User Agreements with **END USERS** pursuant to this Contract. Applicable **H-GAC** order processing charges will be due and payable to **H-GAC** on any End User Agreements surviving termination of this Contract between **H-GAC** and **CONTRACTOR**.

**ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS**

**CONTRACTOR** agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

**ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**CONTRACTOR** shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9: REPORTING REQUIREMENTS**

**CONTRACTOR** agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. **EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.**

**ARTICLE 11: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12: DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.

**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the **CONTRACTOR** and an **END USER**, **CONTRACTOR**'s total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify **H-GAC** described in Article 14, is limited to the price of the particular products/services sold hereunder, and **CONTRACTOR** agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will **CONTRACTOR** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. **CONTRACTOR** understands and agrees that it shall be liable to repay and shall repay upon demand to **END USER** any amounts determined by **H-GAC**, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

**H-GAC**'s liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will **H-GAC** be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless **H-GAC**, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of **CONTRACTOR**'s negligent act or omission under this Contract. **CONTRACTOR** shall notify **H-GAC** of the threat of lawsuit or of any actual suit filed against **CONTRACTOR** relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

**H-GAC** may terminate this Contract for cause based upon the failure of **CONTRACTOR** to comply with the terms and/or conditions of the Contract; provided that **H-GAC** shall give **CONTRACTOR** written notice specifying **CONTRACTOR**'S failure. If within thirty (30) days after receipt of such notice, **CONTRACTOR** shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then **H-GAC** may, at its option, place **CONTRACTOR** in default and the Contract shall terminate on the date specified in such notice. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation was received by **CONTRACTOR**.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either **H-GAC** or **CONTRACTOR** may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. **CONTRACTOR** may be entitled to payment from **END USER** for services actually performed; to the extent said services are satisfactory to **END USER**. **CONTRACTOR** shall pay to **H-GAC** any order processing charges due from **CONTRACTOR** on that portion of the Contract actually performed by **CONTRACTOR** and for which compensation is received by **CONTRACTOR**.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

**CONTRACTOR** agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by **H-GAC**, the State of Texas and the acts and regulations of any funding entity. **CONTRACTOR** agrees to notify **H-GAC** of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between **END USER** and **CONTRACTOR** are to be resolved in accord with the law and venue rules of the state of purchase. **CONTRACTOR** shall immediately notify **H-GAC** of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

**CONTRACTOR** agrees to sell its products to **END USERS** based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable **H-GAC** order processing charge. On notification from an **END USER** that an order has been placed with **CONTRACTOR**, **H-GAC** will invoice **CONTRACTOR** for the applicable order processing charge. Upon delivery of any product/service by **CONTRACTOR** and acceptance by **END USER**, **CONTRACTOR** shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay **H-GAC** the full amount of the applicable order processing charge, whether or not **CONTRACTOR** has received an invoice from **H-GAC**. For sales made by **CONTRACTOR** based on this contract, including sales to entities without Interlocal Contracts, **CONTRACTOR** shall pay the applicable order processing charges to **H-GAC**. Further, **CONTRACTOR** agrees to encourage entities who are not members of **H-GAC**'s Cooperative Purchasing Program to execute an **H-GAC** Interlocal Contract. **H-GAC** reserves the right to take appropriate actions including, but not limited to, contract termination if **CONTRACTOR** fails to promptly remit **H-GAC**'s order processing charge. In no event shall **H-GAC** have any liability to **CONTRACTOR** for any goods or services an **END USER** procures from **CONTRACTOR**.

**ARTICLE 20:**

**LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

**ARTICLE 21:**

**PERFORMANCE AND PAYMENT BOND FOR INDIVIDUAL ORDERS**

H-GAC's contractual requirements DO NOT include a Performance & Payment Bond (PPB), and offered pricing should reflect this cost saving. However, CONTRACTOR must be prepared to offer a PPB to cover any specific order if so requested by END USER. CONTRACTOR shall quote a price to END USER for provision of any requested PPB, and agrees to furnish the PPB within ten business (10) days of receipt of END USER's purchase order.

**ARTICLE 22:**

**CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23:**

**LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]**

CONTRACTOR will, for the duration of this Contract, maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston  
Area Council, Houston, Texas:

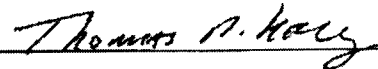
  
\_\_\_\_\_  
Jack Steff, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Director

Date: 1-24, 2018

Signed for Loftin Equipment Co., Inc.  
Phoenix, Arizona:

  
\_\_\_\_\_

Printed Name & Title: Thomas P. Kelly / Director of sales

Date: 1/21, 2018

Attest for Loftin Equipment Co., Inc.  
Phoenix, Arizona:

  
\_\_\_\_\_

Printed Name & Title: Bryan Dietert / Account Manager

Date: 1/21, 2018

Attachment A  
Loftin Equipment Co., Inc.  
Auxiliary Power & Backup Generators  
Contract No.: GE02-18

<b>HGAC PRODUCT CODE</b>	<b>MFGR</b>	<b>CATALOG</b>	<b>OFFEROR DISCOUNT OFF LIST</b>
A08	Kohler	Complete 2017 Kohler industrial catalog, covering stand-by generators, plus associated list price book for base models and factory options	24%
A10	Kubota	Complete 2017 Kubota industrial catalog, covering stand-by generators, plus associated list price book for base models and factory options	8%





INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING

ILC No.: 10-2389 Permanent Number assigned by H-GAC

THIS INTERLOCAL CONTRACT ("Contract"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between the Houston-Galveston Area Council, hereinafter referred to as "H-GAC," having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and \* Town of Paradise Valley, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "End User," having its principal place of business at \* 12401 E. Lincoln Dr. Paradise Valley, AZ 85253

WITNESSETH

WHEREAS, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

WHEREAS, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

WHEREAS, End User has represented that it is an eligible entity under the Act, that its governing body has authorized this Contract on \* Dec 3, 2009 (Date), and that it desires to contract with H-GAC on the terms set forth below;

Resolution # 1207 NOW, THEREFORE, H-GAC and the End User do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state), or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

ARTICLE 2: APPLICABLE LAWS

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Contract.

ARTICLE 3: WHOLE AGREEMENT

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

The period of this Contract shall be for the balance of the fiscal year of the End User, which began \* July 1, 2009 and ends \* June 30, 2010. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H-GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

ARTICLE 5: SCOPE OF SERVICES

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H-GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with specifications and contract terms and pricing established by H-GAC. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

(over)

**ARTICLE 6: PAYMENTS**

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC's contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H-GAC contractor.

**ARTICLE 7: CHANGES AND AMENDMENTS**

This Contract may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

**ARTICLE 8: TERMINATION PROCEDURES**

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC's contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

**ARTICLE 9: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 10: FORCE MAJEURE**

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

**ARTICLE 11: VENUE**

Disputes between procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

**THIS INSTRUMENT HAS BEEN EXECUTED IN TWO ORIGINALS BY THE PARTIES HERETO AS FOLLOWS:**

\*Town of Paradise Valley  
Name of End User (local government, agency, or non-profit corporation)

\*6401 E. Lincoln Dr.  
Mailing Address

\*Paradise Valley, AZ 85253  
City State ZIP Code

\*By: [Signature]  
Signature of chief elected or appointed official

\*James C. Bacon, Sr. Town Manager  
Typed Name & Title of Signatory

Houston-Galveston Area Council  
3555 Timmons Lane, Suite 120, Houston, TX 77027

By: [Signature]  
Executive Director

Date: 3-17-10

Attest: [Signature]  
Manager

Date: March 10, 2010

\*Denotes required fields

**EXHIBIT B**  
**PUBLIC WORKS AND POLICE DEPARTMENT GENERATOR REPLACEMENT**  
**FINAL PROPOSAL**

Attached: Proposal #J-26439636A



12 North 45<sup>th</sup> Avenue, Phoenix AZ 85043



**PROPOSAL**

Date: May 2, 2018

Project: Town of Paradise Valley

Proposal # J-26439636A

**Thank you for your request. We are pleased to provide the following proposal:**

<u>MODEL</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>PRICE</u>
<b>400REOZJB</b>	<b>KOHLER POWER SYSTEMS</b> <b>OUTDOOR DIESEL GENERATOR SET RATED 400 KW</b> UL 2200 listed generator set Standby Rated, 277/480v, 3 phase, 4 wire, 60 hz Electronic Isochronous Governor 50°c/122°f unit mounted radiator Controller, Dec3000 Microprocessor based <ul style="list-style-type: none"> <li>• Remote annunciator panel- NFPA 110</li> <li>• Remote E-stop switch</li> <li>• 2 input / 5 output module for remote indication (programmable)</li> <li>• Run relay for remote indication</li> </ul> One (1) 400A and One (1) 100A amp main line circuit breaker, 80% rated Standard weather housing w/ internal silencer 24 hour / 774 gallon UL142 listed subbase diesel tank Engine jacket water heater - 120VAC Starting battery, cables, and float-equalize charger Standard factory testing at 0.8pf Field startup and on-site test with full resistive load One Year system warranty	1	
<b>KSS-ACVA-0200S</b>	<b>200 AMP AUTOMATIC TRANSFER SWITCH</b> 4 pole, switched neutral, 208Vac, 3 phase NEMA I enclosure - In-phase monitor - Programmable time delays	3	

Installation provided by AJP Electric

Bid includes:

- Disconnect old generator and lift off pad haul off and dispose or relocate onsite.
- Set new generator on existing pad and reconnect to existing distribution panel.
- Sawcut and remove asphalt to allow connection to existing 4" conduit in parking lot.
- Provide boring of (1) 4" conduit from the generator distribution panel to parking lot tie in.
- Provide boring of (1) 4" conduit from new pull box to new 100 disconnect on court building.
- Provide asphalt patch back and repair of any surface disturbed to matching existing.
- Provide and install new wiring as shown on the one-line.
- Provide and install transfer switch control wires in the same conduit as feeders (nec725).



- Provide and install new disconnect, panel and transformer at court building.
- Provide update panel schedules as required to show circuit changes.

**TOTAL PRICE**

**\$ 182,650.00**

FOB factory, freight prepaid and allowed to jobsite.  
 Initial fuel for diesel included in price by Loftin Equipment Co.  
 Offloading and installation by AJP Electric  
 Permits, tax and bond not included  
 Price does not include any federal, state, or local sales, use, property, TERP, or excise taxes that may be applicable.

**Proposed by:**

**Lela Shelton**                      **602-819-2809**  
[lshelton@loftinequip.com](mailto:lshelton@loftinequip.com)  
*Loftin Equipment Company*

<b>Accepted By:</b> _____	
_____	_____
PRINT NAME	TITLE
<b>Date:</b> _____	



**CURRENT ESTIMATED LEAD TIMES**

<b>SUBMITTALS</b>	Submittal data and drawings will be available within <b>fourteen (14) days</b> from receipt of purchase order.
<b>GENERATOR SET</b>	<b>12 - 14 weeks</b> after approved submittals and written release for production.
<b>TRANSFER SWITCH</b>	<b>6 - 8 weeks</b> after approved submittals and written release for production

**IMPORTANT LEAD TIME NOTE:**

It is the responsibility of the Contractor to notify Loftin Equipment at time of order of any specific time constraints involved in this project, and the specific impact of failure to meet that requirement. Lead times shown above are an estimate based on current production schedule and should be verified at time of order release.

**CLARIFICATIONS**

1. This proposal is based on one-line diagram only and is intended to provide a functional system.
2. This proposal is based on your request, and on the information you provided to us. Please verify that it meets all project requirements.
3. Emergency Stationary ICE definition (for EPA compliance): Limited to emergency operation (no time limit) and maintenance and readiness testing of not more than 100 hours/year. Owner/Operator is required to maintain records, and have them available for inspection.
4. Please note the EPA certification level of the diesel engine in this offering and confirm the local requirements and compliance with the stated ICE definition above. Any fines, fees, or permits for the operation of this equipment are the responsibility of the equipment owner, and will not be paid for by Loftin Equipment.
5. Offloading and installation of the proposed equipment, as well as related mechanical piping, electrical conduit and electrical wiring is not included in this proposal.
6. Unless otherwise noted, the generator set uses integral isolation, and does not include steel spring isolators.
7. Fuel is not included in this proposal unless specifically listed above.
8. Protective relay calibration, settings, coordination study, 3<sup>rd</sup> party site testing, etc. are not part of this proposal unless specifically listed as included.
9. NETA acceptance testing, infrared scanning, harmonic content testing, insulation resistance testing, and/or ground fault testing provided by others unless specifically detailed in the above quotation. Standard onsite testing at unity power factor will be provided
10. Lugs for generator breakers and automatic transfer switches will be provided as per the factory offerings and submittal information per UL2200 and UL1008 approvals. If the project requires lug changes from the factory offering it will be done by others and at their expense.

**CUSTOMER RESPONSIBILITIES (ELECTRICAL CONTRACTOR) – NOT PROVIDED BY LOFTIN EQUIPMENT**

1. Off loading and placement of equipment on concrete pad.
2. Provide all required diesel fuel for initial fill and testing of equipment. Full tank is required for testing at startup.
3. Coordinate date and time for system start-up with Loftin Equipment service department once equipment has been installed and connected.
4. Loftin Equipment will provide start up and commissioning of the above equipment. It is the electrical contractor responsibility to have the generator set installed, secured to the concrete pad, fueled, all electrical wiring and conduit installed and terminated and tested and utility power available prior to scheduling system start up.
5. Loftin Equipment Service Department will provide a start up check list which must be completed prior to scheduling system start up. If items are found not to be completed after arrival to site, it is the responsibility of the electrical contractor to issue a new purchase order for the return trip need to complete start up and testing of the equipment.
6. Installation of the proposed equipment, as well as related mechanical piping (exhaust or fuel system), electrical conduit and electrical wiring.

**TRANSFER SWITCH WITHSTAND AND CLOSING RATINGS (RMS SYMMETRICAL AMPS) ARE AS FOLLOWS:**

- **Withstand current ratings on the transfer switches are as stated below. If higher withstand current ratings are needed it is assumed that the electrical contractor will furnish and install fuses electrically in front of the switches to achieve the desired ratings. Fuses, if required, are not included in our proposal or scope.**

**KOHLER MODEL KSS/KSP – SPECIFIC CIRCUIT BREAKER RATING ATS - LIST OF APPROVED BREAKERS WILL BE FURNISHED UPON REQUEST.**

- **400 amp withstand and closing rating @ 480 VAC**
- 35,000 amps when coordinated with any manufacturer’s circuit breakers (3 cycle rating)
- 42,000 amps - 50,000 amps when coordinated with specific circuit breakers
- 100,000 amps when coordinated with current limiting fuses – (Type RK1, RK5)
- 200,000 amps when coordinated with current limiting fuses – (Type J)



#### MISCELLANEOUS

- Equipment, and/or labor, and/or various items are in accordance with Loftin Equipment Company's experienced interpretations of plans and specifications, within the limited time between request for bid and bid due date. Materials supplied under this proposal, which are commercially produced to typical industry standards, have been deemed in substantial compliance and therefore acceptable. Only the materials itemized on the above proposal will be supplied. Please verify all items, sizes and quantities listed on our proposal. Loftin Equipment Company is not responsible for omissions.
- A final invoice will be rendered at time of shipment or offer to ship from our plant. Final payment invoices are net and due 30 days from the date of invoice, upon approved credit.
- All stenographic, typographic, or clerical errors are subject to correction. Upon acceptance by Loftin Equipment Company and written release of order by Customer, this order will be entered for production and will not thereafter be subject to cancellation or deferment of delivery without our written consent. Any expense incurred by Loftin Equipment Company, due to the cancellation of an order or the deferment of a delivery schedule will be billed to the purchaser and be immediately due and owing, together with any and all costs of cancellation, including attorneys fees.
- The following charges may be assessed for cancellation of any order:
  1. 10% of total order price if cancelled after we have provided submittals and prior to releasing for manufacture.
  2. 25% of total order price if cancelled after release to order, or if the equipment is already on order with the factory.
  3. 50% of total order price if cancelled less than 60 days before the scheduled shipped date.
  4. 100% of total order price if cancelled after the equipment has shipped from the manufacturing plant.
- In the event that a proposal is not accepted in its entirety, we reserve the right to decline any part or all of the order.
- Loftin Equipment Company's prices do not include any federal, state, or local sales, use, property, TERP, or excise taxes. If any such taxes are imposed, the seller will invoice them to the buyer as a separate item. In lieu of such taxes, the purchaser must provide with each order, a tax exemption certificate acceptable to the proper taxing authorities, unless such certificate is already on file with Loftin Equipment Company.
- It is the responsibility of the Contractor to notify Loftin Equipment at time of order of any specific time constraints involved in this project, and the specific impact of failure to meet that requirement. Lead times shown above are an estimate based on current production schedule and should be verified at time of order release. After an order has been placed with Kohler, an estimated ship date will be provided that is subject to change. Buyer will be notified if production schedule is altered and Loftin Equipment shall not be responsible for any ensuing liquidated damages, unless specifically agreed to in writing by an officer of the Company.
- ***THIS PROPOSAL IS VALID FOR THIRTY (30) DAYS. Due to current market volatility, orders placed beyond (30) days from proposal date or released more than (75) days beyond proposal date may require a revised proposal prior to order acceptance by Loftin Equipment Company.***

**EXHIBIT C**  
**SPECIFIC REQUIREMENTS/OPTIONS OF TOWN**

Notices: All notices required under the Contract shall be sent to:

Town Manager  
Town of Paradise Valley  
6401 E. Lincoln Drive  
Paradise Valley, Arizona 85253

With mandatory copy to:

Town Attorney  
Town of Paradise Valley  
6401 E. Lincoln Drive  
Paradise Valley, Arizona 85253

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. The Town of Paradise Valley (the “Town”) at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). The Town retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: The Town is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in the Town (“local emergency”) or in the case where the Mayor of the Town of Paradise Valley, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency (“State of Emergency”). In the event of a local emergency or State of Emergency, the Town may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by the Town when necessary to



protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated the Town Emergency Management Coordinator at (480) 348-3631 and the designated the Town representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Contract. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify the Town and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees.