



**BARROW COUNTY**  
*Georgia*

**SERVICES AGREEMENT**

**FOR**

**COUNTY VEHICLE FLEET MAINTENANCE**

Effective on May 1, 2016

## SERVICES AGREEMENT

THIS AGREEMENT is effective as of this 1<sup>st</sup> day of May, 2016, by and between **BARROW COUNTY**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Barrow County Board of Commissioners ("County"), and **AKIN FORD, LLC**, a Georgia limited liability company, dba "Akins Ford Dodge Jeep Chrysler" ("Service Provider"), collectively referred to as the "Parties."

### 1. Background.

- 1.1. County desires to obtain from Service Provider certain services related to the maintenance and repair of County fleet vehicles ("Services") as described herein and as may be more generally described in the attached Exhibit A.
- 1.2. County shall compensate Service Provider for all Services properly performed in accordance with this Agreement as stated below and as may be more particularly described in the attached Exhibit A.
- 1.3. Service Provider agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Service Provider's profession and industry. Service Provider shall take no calculated risk in the performance of the Services. Specifically, Service Provider agrees that, in the event it cannot perform the Services within the budgetary limitations established without disregarding sound principals of Service Provider's profession and industry, Service Provider will give written notice immediately to the County.

### 2. Term.

- 2.1. Initial Term. The initial term of this Agreement will begin on the Effective Date and shall terminate absolutely and without further obligation on the part of the County at the close of the fiscal year in which this Agreement is executed. The initial term of the Agreement and any renewal term(s) provided for herein are collectively referred to as the "Term."
- 2.2. Renewal Terms. This Agreement shall automatically renew on an annual basis, unless the County provides at least 30 days' notice prior to the end of the then current fiscal year that this Agreement will not renew or otherwise takes action to terminate this Agreement as provided herein.
- 2.3. Expiration. Notwithstanding the renewal options provided for above, this Agreement may only be renewed a maximum of four times and will expire, if not earlier terminated as provided for herein, on June 30, 2021.

### 3. Services.

- 3.1. Description of Services. Service Provider agrees to provide to County the Services per this Agreement. Exhibit A sets forth the following: (a) the period of time during which the Services will be provided; (b) a description of the Services to be provided; (c) the amounts payable and payment schedule for the Services; and (d) any additional provisions applicable to the Services. If any services to be performed are not specifically included on Exhibit A, but are reasonably necessary to accomplish the purpose of this Agreement, the parties will discuss such services to determine if they may be deemed to be implied in the scope of the Services to the same extent as if specifically described on Exhibit A, or if a change order is required as provided for below. The Services currently do not include any obligation on the part of the Service Provider to in any way manage or track the overall Barrow County fleet of vehicles and coordinate service thereof. The Service Provider has offered that service at an additional rate, but the parties acknowledge said service is not currently within the scope of Services. The Service Provider, as currently outlined and agreed upon, will service only those vehicles presented for Service by the County and only at such times as the vehicles are presented for said Service.
- 3.2. Resources. Unless otherwise expressly provided in this Agreement, all equipment, software, facilities and Service Provider personnel required for the proper performance of Services shall be furnished by and be under the control of Service Provider. Service Provider shall be responsible, at its sole cost, for procuring and using such resources in proper and qualified and high quality working and performing order.
- 3.3. Changes in Scope. The County reserves the right to order changes in the Services to be performed under this Agreement by altering, adding to, or deducting from the Services. All such changes shall be incorporated in written change orders executed by the Service Provider and the County. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. Over the Term, Service Provider will review the Exhibit A Charges annually and may submit one or more recommended change orders to the County's Authorized Representative for his or her consideration and approval (subject to the limitation in paragraph 3.3.2 below) related to the Services (including, but not limited to, changes in fees and costs) reflected on the attached Exhibit A.
- 3.3.1. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized,

unless contained in a written change order duly executed on behalf of the County and the Service Provider.

3.3.2. The County Manager has authority to execute without further action of the Barrow County Board of Commissioners, any number of change orders so long as their total effect does not materially alter the terms of this Agreement. Any such change orders materially altering the terms of this Agreement in excess of \$25,000 must be approved by resolution of the Barrow County Board of Commissioners.

#### **4. Service Provider's Obligations.**

- 4.1 Service Provider Personnel. Service Provider shall be responsible, at its own cost, for all recruiting, hiring, training, educating and orienting of all Service Provider Personnel, all of whom shall be fully qualified and shall be authorized under Applicable Law to perform the Services.
- 4.2 Timely Performance. Service Provider shall provide all Services in a timely manner, with no unreasonable delay. Once delivered to Service Provider, any County vehicle scheduled for service and/or repair will be addressed and completed as soon as practicable.
- 4.3 Service Provider Authorized Representative. Service Provider designates Brad Akins, or his designee, as Service Provider's Authorized Representative ("Service Provider Authorized Representative") who shall: (a) be a project executive and employee within Service Provider's organization, with the information, authority and resources available to properly coordinate Service Provider's responsibilities under this Agreement; (b) serve as primary interface and the single point of communication for the provision of Services by Service Provider; (c) have day-to-day responsibility and authority to address issues relating to the Services; and (d) devote adequate time and efforts to managing and coordinating the Services.
- 4.4 Subcontracting. Unless specifically authorized in this Agreement, Service provider will not enter into any agreement with or delegate or subcontract any Services to any Third Party without the prior written approval of County Manager, which approval shall not be unreasonably withheld. If Service Provider subcontracts any of the Services (after having first obtained County's prior written approval, in its sole discretion), Service Provider shall: (i) be responsible for the performance of Services by the subcontractors; (ii) remain County's sole point of contact for the Services; and (iii) be responsible for the payment to any subcontractors. Notwithstanding the above, the Service Provider may subcontract with any new car franchise dealer for manufacturers other than Ford or Chrysler for any warranty work, recalls or other manufacturer specific work for manufacturers other than Ford or Chrysler. Further the Service Provider may use outside vendors for windshield and rear glass replacement.

4.5 Conflicts of Interest. Service Provider shall immediately notify County in writing, specifically disclosing any and all potential or actual conflicts of interests, which arise or may arise during the execution of its work in the fulfillment of the requirements of the Agreement. County shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve the conflict of interest.

**5. County's Authorized Representative.**

5.1 Designation and Authority. County designates the County Manager, or his or her designee, as its Authorized Representative (the "County Authorized Representative") who shall: (a) serve as primary interface and the single-point of communication for the provision of Services; (b) have day-to-day responsibility to address issues relating to this Agreement; and (c) to the extent provided under the County's Code of Ordinances, have the authority to execute any additional documents or changes on behalf of County.

5.2 County's Right to Review and Reject. Any Service, document or item to be provided by Service Provider hereunder shall be subject to the review of the County Authorized Representative. The County Authorized Representative may disapprove, if in the County Authorized Representative's sole opinion the Service, document or item is not in accordance with the requirements of this Agreement or sound professional service principles. If any of the said items or any portion thereof are so disapproved, Service Provider shall revise the items until they meet the approval of the County Authorized Representative. However, Service Provider shall not be compensated under any provision of this Agreement for repeated performance of such disapproved items. This provision shall not operate to prevent Service Provider from collecting due compensation for Services properly rendered.

**6. Payment Procedures.**

6.1 General. County agrees to pay the Service Provider for the Services performed and costs incurred by Service Provider in accordance with this Agreement ("Charges"). Compensation for Charges shall be paid to the Service Provider upon receipt of invoices, setting forth in detail the Services performed and costs incurred, along with all supporting documents requested by the County to process the invoice. Any material deviations in any Services described in this Agreement shall be clearly communicated to the County *before charges are incurred* and shall be handled through change orders as described in Section 3.3 above. Service Provider's hourly rates, reimbursable expenses and other compensable items under this Agreement are set forth on Exhibit A.

6.2 Invoices. Service Provider shall prepare and submit invoices to County for payment of all Charges in accordance with Exhibit A. Each invoice shall be in such detail and in such format as County may reasonably require.

- 6.3 Taxes. The Charges are inclusive of all taxes, levies, duties and assessments (“Taxes”) of every nature due in connection with Service Provider’s performance of the Services. Service Provider is responsible for payment of such Taxes to the appropriate governmental authority. If Service Provider is refunded any Tax payments made relating to the Services, Service Provider shall remit the amount of such refund to County within forty-five (45) days of receipt of the refund.
- 6.4 Payment. County shall pay all undisputed Charges within thirty (30) days of the date of the receipt by County of a properly rendered and delivered invoice.
- 6.5 Disputed Charges. If County in good faith disputes any portion of an invoice, County may withhold such disputed amount and notify Service Provider in writing of the basis for any dispute within thirty (30) days of the later of: (a) receipt of the invoice; or (b) discovery of the basis for any such dispute. County and Service Provider agree to use all reasonable commercial efforts to resolve any disputed amount in any invoice within thirty (30) days of the date County notifies Service Provider of the disputed amount.
- 6.6 No Acceptance of Nonconforming Services. No payment of any invoice or any partial or entire use of the Services by County constitutes acceptance of any Services.
7. **Representations and Warranties.** As of the Effective Date and continuing throughout the Term, Service Provider warrants to County as follows:
- 7.1 Authority of Service Provider. Service Provider is duly incorporated or formed, validly existing and is in good standing under the laws of the state in which it is incorporated or formed, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its obligations under this Agreement. Service Provider has all necessary power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on its part. This Agreement constitutes a legal, valid and binding obligation of Service Provider, enforceable against it in accordance with its terms. No action, suit or proceeding in which Service Provider is a party that may restrain or question this Agreement or the provision of Services by Service Provider is pending or threatened.
- 7.2 Standards. The Services will be performed in a workmanlike manner in accordance with the standards imposed by this Agreement and the practices and standards used in well-managed operations performing services similar to the Services.
- 7.2.1 Service Provider shall not operate any County vehicles except as expressly provided for herein and only as necessary to perform the Services. The

parties agree that Service Provider's operation of County vehicles for test drives or transportation between Service Provider's place of business and a subcontractor's place of business are appropriate actions necessary to perform the Services.

7.3 Conformity. The development, creation, delivery, provision, implementation, testing, maintenance and support of all Services shall conform in all material respects to the description of such Services.

7.4 Materials and Equipment. Any equipment or materials provided by Service Provider shall be new (unless otherwise agreed to by the County, in writing, in advance), of clear title, not subject to any lien or encumbrance, of the most suitable grade of their respective kinds for their intended uses, and, to the best of Service Provider's knowledge, shall be free of any defect in design or workmanship and shall be of merchantable quality and fit for the purposes for which they are intended.

7.4.1 The title to any supplies, materials, equipment, or other personal property shall remain in the Service Provider until fully paid for by the County.

7.5 Payment of Other Persons. Service Provider represents and warrants that upon receipt of any payment from County, all subcontractors, material men, suppliers and similar firms or persons engaged by Service Provider in connection with the Charges associated with such invoices have been paid in full or will be paid in full.

7.6 Authority of County. County is duly organized and existing under the laws of the State of Georgia has all necessary power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary actions on its part. This Agreement constitutes a legal, valid and binding obligation of County, enforceable against it in accordance with its terms. No action, suit or proceeding in which County is a party that may restrain or question this Agreement or the provision of Services by Service Provider is pending or threatened.

## 8. Compliance with Laws.

8.1 General. Service Provider and its subcontractors will perform the Services in compliance with any and all applicable federal, state and local laws, rules or regulations ("Applicable Laws").

8.2 Consents, Licenses and Permits. Service Provider will be responsible for the cost of obtaining, maintaining and complying with, and paying all fees and taxes associated with, all applicable licenses, authorizations, consents, approvals and permits required of Service Provider in performing Services and complying with this Agreement.

**9. Confidential Information.**

- 9.1 General. Each Party agrees to preserve as strictly confidential all Confidential Information of the other Party. Each Party agrees to hold the Confidential Information of the other in trust and confidence and will not disclose it to any Person, or use it (directly or indirectly) for its own benefit or the benefit of any other Person other than in the performance of its obligations under this Agreement.
- 9.2 Disclosure of Confidential Information or Information Other Party Deems to be Confidential Information. Each Party will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by Applicable Law. Prior to making such a disclosure, to the extent allowed pursuant to Applicable Law, each Party shall provide the other with at least thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the Person requesting disclosure. Should the nondisclosing Party contest the disclosure, it must: a) seek a protective order preventing such disclosure; or b) intervene in such action compelling disclosure, as appropriate. This Section shall be applicable to information that one Party deems to be Confidential Information, but the other Party does not.
- 9.3 Georgia Open Records Act. The provisions above notwithstanding, information provided to the County is subject to disclosure under the Georgia Open Records Act (“GORA”). Pursuant to O.C.G.A. § 50-18-72(a)(34), “[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A § 10-1-760 et seq.]”

**10. Audit and Inspection Rights.**

10.1 General.

- 10.1.1 Service Provider will provide to County, and any Person designated by County, reasonable access to Service Provider Personnel and to Service Provider-owned Facilities for the purpose of performing audits and inspections of Service Provider, Service Provider Personnel and/or any of the relevant information relating to the Services and this Agreement. Such audits, inspections and access may be conducted to: (a) verify the accuracy of Charges and invoices; (b) examine Service Provider’s performance of

the Services; (c) monitor compliance with the terms of this Agreement; and (d) any other matters reasonably requested by County related to Service Provider's obligations hereunder. Service Provider shall provide full cooperation to County and its designated Persons in connection with audit functions and examinations by regulatory authorities. Any audit or inspection of Service Provider records or data shall be limited to ticketed items charged to the County and shall not include an audit or inspection of complete Service Provider data, records or practices.

10.1.2 All audits and inspections will be conducted during normal business hours (except with respect to Services that are performed during off-hours) and the frequency and length of said audits and inspections shall be reasonable.

10.1.3 Service Provider shall promptly respond to and rectify the deficiencies identified in and implement changes suggested by any audit or inspection report if current practices of Service Provider are contrary to the express terms of this Agreement.

10.1.4 If any audit or inspection of Charges or Services reveals that County has overpaid any amounts to Service Provider, Service Provider shall promptly refund such overpayment and Service Provider shall also pay to County interest on any intentional overcharge at the rate of one-half percent (0.5%) per month (or such maximum rate permissible by Applicable Law, if lower) from the date the overpayment was made until the date the overpayment is refunded to County by Service Provider.

10.2 Records Retention. Until the later of: (a) six (6) years after expiration or termination of this Agreement; (b) the date that all pending matters relating to this Agreement (e.g., disputes) are closed or resolved by the Parties; or (c) the date such retention is no longer required to meet County's records retention policy or any record retention policy imposed by Applicable Law, if more stringent than County's policy, Service Provider will maintain and provide access upon request to the records, data, documents and other information required to fully and completely enable County to enforce its audit rights under this Agreement.

**11. Intentionally Deleted.**

**12. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Service Provider agrees that, during performance of this Agreement, Service Provider, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Service Provider agrees to comply with all applicable

implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

13. **Insurance Requirements.** Service Provider shall comply with the following insurance requirements:

13.1 **Requirements.** The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.

13.2 **Minimum Limits of Insurance.** Contractor shall maintain the following insurance policies with coverage and limits no less than:

13.2.1 *Commercial General Liability.* \$500,000 (five hundred thousand dollars) combined single limit per occurrence \$1,500,000 (one million five hundred thousand dollars) aggregate comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage to premises/operations, products/completed operations, independent Service Providers and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

13.2.2 *Commercial Automobile Liability (owned, non-owned, hired).* \$500,000 (five hundred thousand dollars) combined single limit per occurrence \$1,500,000 (one million five hundred thousand dollars) aggregate for comprehensive Commercial Automobile liability coverage (owned, non-owned, hired) including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

13.2.3 *Workers' Compensation and Employers' Liability.* Workers' Compensation policy with limits as required by the State of Georgia and Employers' Liability limits of \$1,000,000 (one million dollars) per occurrence or disease. (If Contractor is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Contractor must secure Workers' Compensation coverage approved by both the State Board of Workers' Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is

otherwise required of employers entitled to coverage under the Georgia Workers' Compensation Act. Further, the Contractor shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

13.2.4 *Commercial Umbrella Liability Coverage.* \$10,000,000 (ten million dollars) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and Professional Liability.

13.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County in writing so that the County may ensure the financial solvency of the Contractor; self-insured retentions should be included on the certificate of insurance.

13.4 Other Insurance Provisions. Each policy shall contain, or be endorsed to contain, the following provisions respectively:

13.4.1 General Liability, Automobile Liability and (if applicable) Umbrella Liability Coverage.

(a) *Additional Insured Requirement.* The County ("Insured Party") shall be named as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

(b) *Primary Insurance Requirement.* The Contractor's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Party. Any insurance or self-insurance maintained by the Insured Party shall be in excess of the Contractor's insurance and shall not contribute with it.

(c) *Reporting Requirement.* Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Party.

(d) *Separate Coverage.* Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom

claim is made or suit is brought, except with respect to limits of insurance provided.

- (e) *Defense Costs/Cross Liability.* Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

13.4.2 Intentionally deleted.

13.4.3 All Coverages.

- (a) *Notice Requirement.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the County. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.
- (b) *Starting and Ending Dates.* Policies shall have concurrent starting and ending dates.
- (c) Intentionally deleted.

13.5 Acceptability of Insurers. The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurer(s) with an A.M. Best Policyholder’s rating of no less than “A-” and with a financial rate of Class VII or greater. The Contractor shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.

13.6 Verification of Coverage. Contractor shall furnish to the County for County approval certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Contractor is specifically required to provide an endorsement naming the County as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by Contractor’s insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The County reserves the right to require complete, certified copies of all required insurance policies at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

- 13.7 Subcontractors. Contractor shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Services performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Services. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Party as additional insured. Notwithstanding the above, the Service Provider shall not be required to verify the insurance policies or otherwise comply with the insurance requirements of section 13.7 herein as to subcontracts with any new car franchise dealer for manufacturers other than Ford or Chrysler for any warranty work, recalls or other manufacturer specific work for manufacturers other than Ford or Chrysler or for outside vendors for windshield and rear glass replacement.
- 13.8 Progress Payments. The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractor or insurance carriers from providing the coverage required in this Agreement.
14. **Force Majeure**. Neither Party will be liable for default or delay in the performance of its obligations under this Agreement to the extent such default or delay is caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the nonperforming Party will be excused from performance or observance of affected obligations for as long as: (a) the Force Majeure Event continues; and (b) the Party continues to attempt to recommence performance or observance to the extent commercially reasonable without delay. If any Force Majeure Event continues for thirty (30) consecutive days, County may, at its option during such continuation, terminate this Agreement, in whole or in part, without penalty or further obligation or liability of County.
15. **Termination**.
- 15.1 Termination by County for Cause. County may at its option, by giving written notice to Service Provider, terminate this Agreement:
- 15.1.1 for a material breach of the Agreement by Service Provider that is not cured by Service Provider within seven (7) days of the date on which County provides written notice of such breach;
  - 15.1.2 immediately for a material breach of the Agreement by Service Provider that is not reasonably curable within seven (7) days;
  - 15.1.3 immediately upon written notice for numerous breaches of the Agreement by Service Provider that collectively constitute a material breach or reasonable grounds for insecurity concerning Service Provider's performance; or
  - 15.1.4 immediately for engaging in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Service Provider's obligations under this Agreement or is in violation of any County Ethics Ordinances.

- 15.2 Termination by County for Insolvency. County may terminate this Agreement immediately by delivering written notice of such termination to Service Provider if Service Provider: (a) becomes insolvent, as that term may be defined under Applicable Law, or is unable to meet its debts as they mature; (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors; (c) is adjudicated bankrupt or makes an assignment for the benefit of its creditors generally; (d) fails to deny or contest the material allegations of an involuntary petition filed against it pursuant to any Applicable Law relating to bankruptcy, arrangement or reorganization, which is not dismissed within sixty (60) days; or (e) applies for or consents to the appointment of any receiver for all or any portion of its property.
- 15.3 Termination by County for Convenience. At any time during the Term of this Agreement, County may terminate this Agreement for convenience upon fourteen (14) days written notice of such termination. Upon a termination for convenience, Service Provider waives any claims for damages, including loss of anticipated profits. As Service Provider's sole remedy and County's sole liability, County will pay Charges for the Services properly performed prior to the notice of termination, and reasonable administrative costs of settling and paying claims arising out of the termination of Services under purchase orders or subcontracts except to the extent any products under such purchase orders or subcontracts can be used by Service Provider in its business within the thirty (30) days following termination. If requested, Service Provider shall substantiate such costs with proof in accordance with this Agreement.
- 15.4 Termination by Service Provider for Cause. Service Provider may at its option, by giving written notice to County, terminate this Agreement for a material breach of the Agreement by County that is not cured by County within thirty (30) days of the date on which Service Provider provides written notice of such breach;
- 15.5 Termination by Service Provider for Convenience. At any time during the Term of this Agreement, Service Provider may terminate this Agreement for convenience upon one hundred eighty (180) days written notice of such termination.
- 15.6 Effect of Termination. Unless otherwise provided herein, termination of this Agreement, in whole or in part and for any reason, shall not affect: (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination; or (b) any remedies to which a Party may be entitled under this Agreement, at law or in equity. Upon termination of this Agreement, Service Provider shall immediately: (i) discontinue Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated Services; (ii) inventory, maintain and turn over to County all work product,

licenses, equipment, materials, plant, tools, and property provided by County for performance of the terminated Services; (iii) promptly obtain cancellation, upon terms satisfactory to County, of all purchase orders, subcontracts, rentals or any other agreements existing for performance of the terminated Services, or assign those agreements, as directed by County; (iv) comply with all other reasonable requests from County regarding the terminated Services; and (v) continue to perform in accordance with all of the terms and conditions of this Agreement any portion of the Services that are not terminated.

**16. General.**

- 16.1 Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the County's sovereign immunity or any individual's qualified good faith or official immunities.
- 16.2 No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any of County's elected or appointed officials, officers, directors or employees. No such individual shall be personally liable to the Service Provider or any successor in interest in the event of any default or breach by the County or for any amount which may become due to the Service Provider or successor or on any obligation under the terms of this Agreement. Likewise, Service Provider's performance of Services under this Agreement shall not subject Service Provider's individual employees, officers or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand or suit shall be directed and/or asserted only against Service Provider or the County, respectively, and not against any elected or appointed official, officer, director, or employee.
- 16.3 Applicable Law. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of Georgia without regard to its choice of law principles.
- 16.4 Jurisdiction and Venue. The Parties hereby submit and consent to the exclusive jurisdiction of the state courts of Barrow County, Georgia, or in the United States District Court for the Northern District of Georgia and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in such courts, and each of the Parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.
- 16.5 Notices. All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Parties at the address given below, or at a substitute

address previously furnished to the other Parties by written notice in accordance herewith:

**NOTICE TO THE COUNTY** shall be sent to:

Barrow County Manager  
Historic Courthouse  
30 N. Broad Street  
Winder, Georgia 30680  
770-307-3000

**NOTICE TO THE SERVICE PROVIDER** shall be sent to:

Brad Akins  
Akin Ford, LLC, dba Akins Ford Dodge Jeep Chrysler  
220 W. May Street  
Winder, Georgia 30630  
(770) 867-9136

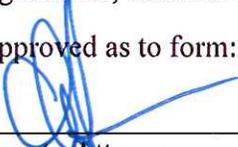
- 16.6 Waiver. Any waiver by the Parties or failure to enforce their rights under this Agreement shall be deemed applicable only to the specific matter and shall not be deemed a waiver or failure to enforce any other rights under this Agreement, and this Agreement shall continue in full force and effect as though such previous waiver or failure to enforce any rights had not occurred. No supplement, modification, amendment or waiver of this Agreement will be binding on County unless executed in writing by the County Authorized Representative.
- 16.7 Assignment. The Service Provider covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of the County and any attempt to do so without such written consent shall be *void ab initio*. As to any approved subcontractors, the Service Provider shall be solely responsible for reimbursing them, and the County shall have no obligation to them.
- 16.8 Publicity. Service Provider shall not intentionally make any public announcement, communication to the media, take any photographs or release any information concerning County, the Services or this Agreement without the prior written consent of County.
- 16.9 Severability. In the event that any provision of this Agreement is declared invalid, unenforceable or unlawful, such provision shall be deemed omitted and shall not affect the validity of other provisions of this Agreement.
- 16.10 Further Assurances. Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary to give effect to this Agreement.

- 16.11 No Drafting Presumption. No presumption of any Applicable Law relating to the interpretation of contracts against the drafter shall apply to this Agreement.
- 16.12 Survival. Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to its meaning, shall survive the expiration or termination of this Agreement.
- 16.13 Independent Contractor. Service Provider is an independent contractor of County and nothing in this Agreement shall be deemed to constitute Service Provider and County as partners, joint venturers, or principal and agent, or be construed as requiring or permitting the sharing of profits or losses. Neither Party has the authority to represent or bind or create any legal obligations for or on behalf of the other Party.
- 16.14 Third Party Beneficiaries. This Agreement is not intended, expressly or implicitly, to confer on any other Person any rights, benefits, remedies, obligations or liabilities.
- 16.15 Cumulative Remedies. Except as otherwise provided herein, all rights and remedies under this Agreement are cumulative and are in addition to and not in lieu of any other remedies available under Applicable Law, in equity or otherwise.
- 16.16 Entire Agreement. This Agreement and any exhibits or attachments hereto contain the entire agreement of the Parties relating to their subject matter and supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to such subject matter. This Agreement may only be amended or modified by a writing executed by each Party's authorized representative and each such writing shall be deemed to incorporate the Agreement, except to the extent that County is authorized hereunder to issue any unilateral change order. Service Provider may not unilaterally amend or modify this agreement by including provisions in its invoices, or other business forms, which shall be deemed objected to by County and of no force or effect.
- 16.17 Unauthorized Goods or Services. Service Provider acknowledges that any changes to this Agreement by amendment, modification, change order or other similar document may require the legislative authorization of the County's Board of Commissioners. Service Provider agrees that if it provides goods or services to the County under any amendment, modification or change order of this Agreement that has not received proper legislative authorization, the County may withhold payment for any unauthorized goods or services provided by Service Provider. Service Provider assumes all risk of non-payment for the provision of any unauthorized goods or services to the County as set forth in this paragraph.
17. **Illegal Immigration Reform and Enforcement Act**. Pursuant to O.C.G.A. 13-10-91 et seq., Contractor is required to execute the Contractor Affidavit, attached hereto and by

this reference incorporated herein. Compliance with this state law requirement is a material term of this contract. Forms of Contractor Affidavit and Subcontractor Affidavit are attached hereto, marked Exhibit B.1 and Exhibit B.2 respectively.

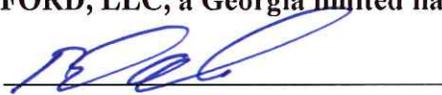
**IN WITNESS WHEREOF** the County and the Service Provider have executed this Agreement, which is effective as of the Effective Date provided above.

Approved as to form:

  
\_\_\_\_\_  
County Attorney

**SERVICE PROVIDER:**

**AKIN FORD, LLC, a Georgia limited liability company**

By: 

Its: MANAGING MEMBER

Member/Manager

**BARROW COUNTY**

By: 

Its: Pat Graham, Chairman

[COUNTY SEAL]

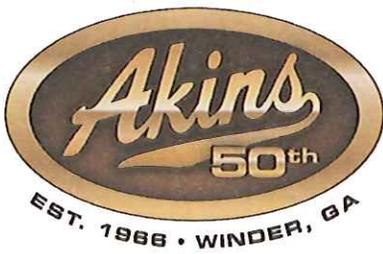


Attest: Danielle Austin

Its: County Clerk

**EXHIBIT A**

**[insert scope of services/updated proposal information here]**



April 26, 2016

Barrow County  
30 North Broad Street  
Winder, Ga. 30680

Subject: Vehicle Maintenance Bid Proposal

- We will have a dedicated Fleet Manager assigned to your account that will handle billing, scheduling, coordinating repair approvals, and signed purchase order requirements.
- Billing will be handled weekly. When the end of the month falls in the middle of the week we will close the billing on the last day of that month.
- All service requested will require a PO or work order approval provided by your designated department fleet coordinator prior to any work being performed.
- Cars, Minivans and Light Trucks (under  $\frac{3}{4}$  ton) Flat Labor Rate is \$74.00 per hour.
- Diesel vehicles, Equipment, Tractors, Trailers, and 8,500-26,000 GVW Flat Labor Rate is \$89.97 per hour.
- We recommend service intervals at 5,000 miles.
- Oil Change, Tire Rotation on Cars, Light Truck & Minivans plus a County approved Inspection form is \$39.00. (See attached proposed Inspection Form.)
- Tire Balance per tire, when needed is \$7.00.
- Cars and Light Trucks Brake Pad replacement \$55.00 labor per axle plus parts.
- Cars and Light Trucks Machine Rotors \$55.00 labor per axle.

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- Alignment Pricing:
  - Cars & Lt Truck 2 Wheel     \$69.95
  - Cars & Lt Truck 4 Wheel     \$89.95
  - 450/550 Med Truck             \$129.00
  - 650 & over HD Truck           \$179.00
    - *Shims not included, additional cost if needed*
  
- Guidelines for recommended replacement of normal wear and tear items and general maintenance:
  - Tires replaced when tread depth measurement is 5/32 or below.
  - Disc Brake Pads replaced at 5mm or below. Rotors replaced at 1.00mm above minimum thickness.
  - Drum Brake Shoes will be replaced at 1.5mm or below. Brake Drums will be replaced at 1.0mm above minimum thickness.
  
- Tires are billed State concession pricing. Tires without State concession are 10% over cost. Mount and Balance on cars and light trucks are billed at flat labor charge of \$14.00 per tire (includes valve stems and wheel weights). Tire Patches are billed at \$14.00 each, for approved repairs.
  
- Original Equipment Manufactured parts will carry that Manufacturers warranty. At this time most Ford and Chrysler parts carry a 24 month unlimited mileage warranty parts and labor (excluding assemblies). Non Ford or Chrysler Original parts warranties will be based on that manufacturer's warranty guidelines.
  
- Ford Engine and Transmission Assemblies at this time carry a 36 month parts and labor warranty with unlimited mileage. Chrysler Engine and Transmissions at this time carry a 36 month parts and labor warranty with 100,000 mileage limit, excluding Cummins Diesel Parts. Cummins Diesel Parts carry a 6 month/unlimited mileage coverage.
  
- OEM parts are billed at List Minus 20%. Aftermarket Parts can be used at your request and are billed at Cost Plus 20%. Major assemblies (Engines and Transmissions) will be billed at a maximum mark up of \$300.00.
  
- Aftermarket parts will carry a minimum of 12 month/12,000 mile parts and labor warranty.



**VEHICLE CHECKUP**

Checked and OK
Will need future attention
Requires immediate attention
Not applicable

Date: \_\_\_\_\_  
 Miles: \_\_\_\_\_

RO Number

V I N

**5,000 MILE SERVICE INTERVAL**

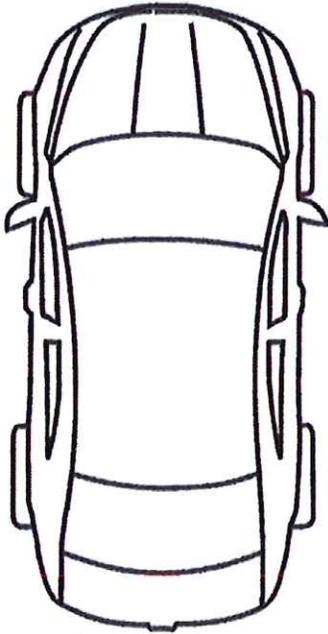
<input type="checkbox"/>	Engine oil
<input type="checkbox"/>	Engine filter
<input type="checkbox"/>	Rotate tires
<input type="checkbox"/>	Replace non-working bulbs
<input type="checkbox"/>	Perform Inspection
<input type="checkbox"/>	Oil interval indicator reset

YEAR: \_\_\_\_\_ MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_

**NOTES/COMMENTS**

Air Filter					
Engine Coolant					
Power Steering Fluid					
Washer Fluid					
Brake Fluid					
Motor Oil					
Belts					
Windshield					
Left Wiper					
Right Wiper					
Rear Wiper					
Horn					
Headlamps					
Suspension					
Steering					
Rear Differential					
Heater/Defroster					
Frame/Subframe					
Drive shaft/CV					
Seatbelts					
Hoses					
Brake lamps					
Tail lamps					
L Parking/Marker					
R Parking/Marker					
Battery					CC AMPS
LF Tire					/32
RF Tire					/32
LR Tire					/32
RR Tire					/32
LF Brake					mm
RF Brake					mm
LR Brake					mm
RR Brake					mm

Draw on the vehicle below to address any additional problems/concerns.



DRIVER: \_\_\_\_\_  
 PHONE #: \_\_\_\_\_

Comments/Notes:

TECH #

EXHIBIT B.1

STATE OF GEORGIA  
COUNTY OF Barrow

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of Barrow County has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

388164  
Federal Work Authorization User Identification Number

1-27-2011  
Date of Authorization

AKIN FORD LLC DBA AKINS FORD  
Name of Contractor DODGE JEEP CHRYSLER

SERVICE AGREEMENT 4/26/2016  
Name of Project

BARROW COUNTY BOARD OF  
Name of Public Employer COMMISSIONERS

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2016 in Winder (city),  
GA (state).

[Signature]  
Signature of Authorized Officer or Agent

Brad Akins  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON  
THIS THE 26th DAY OF  
April, 2016.

[Signature]  
NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:  
3/30/2019



**EXHIBIT B.2**

STATE OF GEORGIA  
COUNTY OF \_\_\_\_\_

**SUBCONTRACTOR AFFIDAVIT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of Barrow County has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification  
Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_, 201\_\_ in \_\_\_\_\_ (city),  
\_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or  
Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:  
\_\_\_\_\_