



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2019033
TREE PRUNING, REMOVAL AND OTHER RELATED SERVICES**

CITY OF MESA, Arizona (“City”)

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400 Mesa, AZ 85201
Attention	Jess Romney, CPPB Procurement Officer
E-Mail	Jess.Romney@MesaAZ.gov
Phone	(480) 644-5798
Fax	(480) 644-2655

AND

WEST COAST ARBORISTS, INC., (“Contractor”)

Mailing Address	6528 W. Myrtle Avenue Glendale, AZ 85301
Delivery Address	
Attention	Victor Gonzalez Vice President, Marketing
E-Mail	vgonzalez@wcainc.com
Phone	(602) 403-8455
Fax	(623) 226-4236

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 29th day of January 2019, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **West Coast Arborists, Inc.**, a(n) California corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2019003** ("Solicitation") for **Tree Pruning, Removal and Other Related Services**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **February 1, 2019** and ending on **January 31, 2022**. The use of the word "**Term**" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the Scope of Work, the Parties acknowledge and agree that the Contractor shall perform in accordance with all terms, conditions, specifications and other requirements set forth within the Solicitation and Response unless modified herein.

3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
 - a. Agreement
 - b. Exhibits
 1. Mesa Standard Terms & Conditions
 2. Scope of Work
 3. Other Exhibits not listed above
 - c. Solicitation including any addenda
 - d. Contractor Response

5. **Payment.**

5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("Pricing") in consideration of Contractor's performance of the Scope of Work during the Term.

5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

The Contractor further agrees that any reductions in the price of the materials or services covered by this Agreement will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

5.3 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this Section 5.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to the expiration date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted

thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.5 **Invoices**. Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes
- j. Total amount due.

5.6 **Payment of Funds**. Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise; payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

5.7 **Disallowed Costs, Overpayment**. If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance**.

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.

- 6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
 - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - 6.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;

- b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
 11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
 12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:
 - (A) Special Terms and Conditions & Detailed Specifications
 - (B) Pricing
 - (C) Mesa Standard Terms and Conditions
 - (D) Other
 13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
 14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
 15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

By: _____

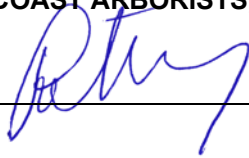
Printed Name

Title

Date

WEST COAST ARBORISTS, INC.

By: _____



Patrick Mahoney
Printed Name

President
Title

1/24/19
Date

REVIEWED BY:

By: _____

Jess Romney, CPPB
Procurement Officer

**EXHIBIT A
SCOPE OF WORK**

SPECIAL TERMS AND CONDITIONS

1. **DEFINITION OF TERMS:** For purposes of this solicitation and subsequent contract, the following definitions shall apply.
 - 1.1 "Agreement" shall mean the Agreement for tree pruning, removal and related services for the City of Mesa.
 - 1.2 "City" shall mean the City of Mesa, Arizona, its officers, employees, or representatives.
 - 1.3 "Contract Boundaries" shall mean the area within the perimeter of each individual contract maintenance area described and listed in this original agreement or later added by change order.
 - 1.4 "Contractor" shall mean the person, corporation, or partnership performing tree pruning, removal or related services under contract with the City.
 - 1.5 "Debris" shall mean all litter, rubbish, leaves, sand, dirt, garbage, and other foreign material removable from within the contract boundaries.
 - 1.6 "May" shall mean permissive.
 - 1.7 "Should" shall mean expected.
 - 1.8 "Shall" shall mean mandatory.
 - 1.9 "Grounds" shall mean all developed or undeveloped dedicated public right-of-way and other City owned property within the existing or future corporate limits of the City of Mesa. These "grounds" may include landscaped areas adjacent to City buildings or facilities, parks, retention basins, parkways, medians, or other lands proposed for future development by the City.
 - 1.10 "Routine Work" shall mean all work requirements described in these specifications included as part of the pay items listed for each contract area or areas added by change order and/or amendment.
 - 1.11 "Off-Hours Work" any work performed outside the City's regularly scheduled hours, which are 6:00 AM to 5:00 PM Sunday through Saturday.
 - 1.12 "Extra Work" shall mean any work the City requests the Contractor to perform which is either outside the contract boundaries or does not conform to the definition of "Routine Work" required by these specifications. All authorized and approved Extra Work performed under this contract shall be paid at the prevailing Extra Work Rate for labor services and equipment used.
 - 1.13 "Emergency Work" shall mean any work the City requests the Contractor to perform which IS in response to an immediate hazard or other emergency, as determined by the City. The Contractor must be available to commence work within one (1) hour of receiving the City's request. All authorized Emergency Response work shall be paid at the established Emergency Work Rates, or Crew Rental Rates as determined by the City.
 - 1.14 "Storm Clean Up" shall mean any routine work performed which is storm or weather related, but not necessarily an emergency.
 - 1.15 "Hard Surface Area" shall mean any area other than those where the surface of the ground is covered with grass, plants, rock products, soil or any combination of these items.
 - 1.16 "Landkey" shall mean all area within the contracted boundaries of a specific site.
 - 1.17 "GIS" shall mean a geographic information system designed to capture, store, manipulate, analyze, manage, and present spatial or geographic data.
2. **DETAILED SPECIFICATION:** Unless otherwise specified or authorized by the City, all labor, routine and extra work performed under this agreement shall include the furnishing of all labor, supervision, equipment, tools, fuel, materials (unless provided by the City in accordance with these documents), insurance, bonding, and all other items incidental thereto which are necessary to perform the work as specified, for Tree Pruning, Removal and Other Related Services that will promote the health, appearance, and safe management of the City's urban forest. The Contractor shall provide a yard for parking, maintenance, and storage of all equipment at a site other than on City property and at no added cost to the City. For the convenience of the City, and only when space is available, the Contractor may be permitted to place a materials storage unit on City

property. Any such storage unit so placed shall be removed from City property immediately when requested to do so by City representative

3. **ADDITIONS AND DELETIONS:** The City may add or delete services and related services at any time by change order. The Contractor will be paid for all approved services satisfactorily completed. The City reserves the right to utilize prices and services originally proposed for future award recommendations. Pricing for services and related services added to the contract shall be consistent with pricing for other comparable contract sites.
4. **PROPERTY DAMAGE, VANDALISM AND VEHICLE ACCIDENTS:** If an accident occurs within the contract boundaries or on adjacent property or public right of way, the Contractor shall report the accident to the City within two (2) working hours of discovery. All cases of property damage or vandalism shall be reported to the City immediately. The City will review the situation and determine the appropriate course of action.
5. **CONSTRUCTION:** Areas where considerable construction is taking place are subject to suspension until construction is complete. The Contractor shall inspect the area(s) under construction and make notes of condition. A written report of condition shall be submitted to the City within three (3) working days after the City's request.
6. **DISPOSAL OF TRASH/WASTE:** All trash and any other waste generated from executing this agreement shall be transported and disposed of in compliance with federal, state, county and City laws and regulations.

The contractor is solely responsible for any disposal fees (dumping charges), incurred as a result of routine work. Fees for disposal of waste accumulated from extra work or emergency response work shall be listed as "Extra" or "Emergency Response Work" on the invoices as a separate item to be reimbursed by the City. The disposal must be at an authorized landfill. Disposal costs greater than the areas' current fee range will be the responsibility of the Contractor. A copy of the disposal fee invoice must be submitted with the extra work invoice to receive payment.

7. **CONTRACTOR/CITY COMMUNICATIONS:**

- 7.1 **Local Office:** Throughout the period of this contract, the Contractor shall establish and maintain a local office and an authorized managing agent. The local office shall be within a one (1) hour drive time from the contract area.

Contractor's local managing agent shall serve as the point of contact for dealing and communicating with the City. Upon City request, the General Manager, President or their designee shall meet with City representatives within twenty-four (24) hours of receiving notice.

- 7.2 **City Contact:** The Contractor's primary point of contact will be a designated Contract Representative and City's authorized representative in matters pertaining to initiating change orders, invoice authorization, schedule approvals, or daily performance of this contract.

- 7.3 **Field Representative:** The Contractor shall designate a minimum of one (1) field supervisor that fluently speaks, reads and writes in English. This representative shall be available during the City's work hours (Monday through Friday 6:00 AM to 5:00 PM) to oversee work being performed, address concerns, or coordinate with City representatives.

For convenience and efficiency, the Contractor shall provide his designee a mobile telephone device capable of sending and receiving text and email messages, making or receiving phone calls, retrieving voicemail messages, and taking work related photos. The Contractor shall be responsible for the payment of all charges relating to its use. The phone shall be kept operational and available to the City at all times.

8. **CONTRACTOR'S EMPLOYEES:**

8.1 **Identification:**

- A. Contractor's employees shall be required to wear a clean uniform bearing the Contractor's name. Identification badges furnished by the Contractor and City security badges furnished

by the City shall both be worn by all Contractor and subcontractor employees, while on City premises. The badge shall have the bearer's picture, name and employee number (if applicable). New employees shall be in uniform and appropriately badged by the City's Municipal Security according to work locations with ten (10) working days after their start date.

- B. Contractor personnel assigned to this contract may be required to be fingerprinted in conjunction with a background check through the City of Mesa. Required background clearance levels may vary based on site security requirements and will be determined by the City's authorized representative. All expenses related to this process will be paid by the City of Mesa.
 - C. City identification badges issued to Contractor personnel are required to be returned to the City's authorized representative upon termination/separation of employment. Failure to do so will result in Liquidated Damage charges (amounts specified in the Liquidated Damage Table) being deducted from the billing cycle immediately following the incident.
 - D. Only authorized Contractor employees are allowed on the premises of the City facilities. Contractor employees are not to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized Contractor employee, subcontractor or agent.
 - E. The Contractor shall be liable for any damages or losses caused by its employees or agents during the agreement period.
 - F. The employees found that do not have City I.D badges, will be removed from the site and will not perform work under this agreement until properly badged and uniformed.
- 8.2 **Certifications:** All tree work performed under this agreement shall be supervised by an ISA Certified Arborist. All emergency crew workers shall be ISA Certified Tree Workers and Climber Specialists.
- 8.3 **Driver's License:** Employees driving the Contractor's vehicles shall at all times possess and carry a valid vehicle operator's license issued by the State of Arizona, the class of which shall be appropriate for the vehicles operated, in accordance with State law.
- 8.4 **Conduct:** Contractor's employees, officers and subcontractors shall not identify themselves as being employees of the City of Mesa. Employees shall conduct themselves in such a manner as to avoid embarrassment to the City of Mesa and shall be courteous to the public and City personnel. In the event of difficulty with the public, the City shall be notified immediately.

The Contractor shall prohibit the use of intoxicating substances by drivers and crew members while on duty or in the course of performing their duties under this contract. No employee of the Contractor or any subcontractor who is suspected of being under the influence of intoxicating substances shall be permitted to perform work under this contract.

- 8.5 **List of Employees:** The Contractor shall supply the City with a current list of employees assigned to each City contract. The list must include: full names, driver's license number with expiration date, job title, International Society of Arboriculture (ISA) Certified Arborist, ISA Certified Tree Worker, and ISA Certified Climber Specialist license numbers and expiration dates or any other pertinent or required certifications or registrations. The list shall be kept current, changes to contract assignments of key personnel must be submitted in writing to City of Mesa within two (2) workdays after implementation. Failure to submit current lists and changes shall be subject to liquidated damages as set forth in Section 14. Repeated failures may result in a Notice of Default.

All supervisory personnel must be able to communicate effectively in English (both orally and in writing). The City shall have the right to determine schedule days and the extent and frequency of additional "as needed" services.

9. **CONTRACTOR'S EQUIPMENT:**

9.1 **Vehicles and Equipment:** The Contractor shall provide and maintain during the entire period of this contract, vehicles and equipment sufficient in number, condition and capacity to efficiently perform the work and render the services required by this contract.

All vehicles and equipment must be maintained in good repair, and appearance at all times. The City reserves the right to inspect the Contractor's vehicles at any time to ascertain said condition.

The Contractor shall furnish the City with a list identifying all equipment to be used in fulfilling this agreement and notify the City of any additions or deletions.

9.2 **Vehicle Identification:** All vehicles and trailers used by the Contractor must be clearly identified with the company name, unit identification number, and phone number of the local office on each side of the vehicle.

9.3 **Vehicle Use and Access:** Driving through turf areas of contracted properties is permitted in the performance of routine tree work. However, schedules shall be coordinated with the City's authorized representative seventy-two (72) hours prior to commencing work to allow for suspension of irrigation programming and dry out of turf. The Contractor shall inspect the turf areas to assure damage will not occur prior to entering. If excessive moisture is still present, the Contractor will postpone scheduled work and notify the Contract Representative immediately. Damage to turf or irrigation system components caused by the Contractor shall be immediately reported to the City representative and repaired at the Contractor's expense. Except for emergencies.

The Contractor shall make every effort to assure their vehicles do not enter the Critical Root Zone (CRZ) of trees and palms, except when performing work operations as part of this contract. Efforts should be made to minimize the impact to the CRZ during operations as part of this contract as well. The CRZ is equal to three feet (3') outside the dripline or one foot (1') radially from the tree for every one-inch of trunk diameter at the breast height, whichever is greater. The intent of this requirement is to eliminate unnecessary compaction of the soil within the CRZ of trees and palms.

10. **HOLIDAY SCHEDULE:** The following is a list of holidays on which contract service will not be performed unless previously approved by the City.

- a. New Year's Day – January 1
- b. Martin Luther King Day - Third Monday in January
- c. Presidents' Day Third Monday in February
- d. Memorial Day Last Monday in May
- e. Independence Day July 4
- f. Labor Day First Monday in September
- g. Veterans' Day November 11
- h. Thanksgiving Holiday Fourth Thursday and the following Friday in November
- i. Christmas Day December 25

Holidays that fall on a Saturday are observed the Friday before and holidays that fall on Sunday are observed the Monday following the holiday.

During the week of a holiday, the Contractor shall submit in writing, for approval, an adjusted weekly schedule so that tasks are not omitted, and crews shall return to the normal weekly schedule the following week.

11. **WEATHER - SUSPENSION OF WORK:** In the event of inclement weather, the Contractor will suspend all work until directed by the Contract Representative. The City reserves the right to suspend any or all work due to poor weather conditions or other extreme conditions. The City also reserves the right to authorize the delayed work to be performed at a later date. The Contractor shall not perform any suspended work without written authorization from the City. Other weather conditions that will constitute suspension of work may include, but not be limited to:

- a. Environmental Protection Agency Particulate Matter ("PM-10") days
- b. Work quality is not acceptable.
- c. Other conflicts in Contractor equipment or personnel cause delays in getting work completed.
- d. Work schedule/location conflicts with other City of Mesa activities.
- e. Other conditions exist which, in the opinion of the City of Mesa, could not affect the safety or quality of work under this agreement.

12. **COMPENSATION:**

12.1 **Payment:** Payment will be made within thirty (30) working days after receipt of an itemized invoice from the Contractor and acceptance of the work by the City's authorized representative, less any deductions or assessments as described.

Any and all work for which a complete and accurate invoice is not received by the City within forty-five (45) days of completion shall not be paid.

Payment for work in any given area will be upon completion and acceptance by the City for the entire Landkey group quantity for any given task. An area is defined as the entire Landkey group. No partially completed task within a Landkey group will be considered for payment.

At the City's request, the Contractor shall submit copies of payroll reports. Payroll reports shall include names of employees, hours worked, days worked, location worked, and classification for all employees who performed the work.

The amounts invoiced shall be those agreed upon by this contract or by change order to the contract. The unit price shall include all labor, materials, (unless supplied by the City), equipment, overhead, profit, and any other incidental costs to perform the contracted maintenance.

A. **Deductions to Payments Due:** The City shall establish the payment amount. If the contractor fails to perform work in accordance with the contract, the City may hold part or all payments due to the Contractor. Payment may be withheld (never paid) if the Contractor fails to perform or fails to correct poor performance within the correction time limits.

If the Contractor has not corrected the deficiency within Correction Time Limit Schedule, the City may withhold all payments for the area affected. Upon completion of the corrective action within the time frame listed, payment will be released for work completed satisfactorily. The City will not pay the Contractor for unsatisfactory work or uncorrected deficiencies.

B. Failure to correct areas identified as deficient by the City within the limits of this correction time limit schedule, unless written extensions have been authorized, may result in cause for termination of the contract in accordance with provisions of this document.

The City may determine it is necessary to hire an outside contractor to perform work that was neglected or done poorly by the primary Contractor. The City shall charge back the cost of such outside labor to the primary Contractor.

Correction Time Limit Schedule (Time starts upon receipt of notification):

Emergency Response Work	1 Hour Response – Complete ASAP
Group Pruning	1 Working Day
Individual Pruning	1 Working Day
Palm Pruning	1 Working Day
Submission of Schedules & Work plans	1 Working Day
Submission of Incident Reports	1 Working Day
Notification of Property Damage, Vandalism and	1 Working Day

- 12.2 **Payment Requests, Work Reports, and Re-Inspection:** Daily, the Contractor shall submit to the City a detailed report of work items completed the previous day. The report will be due within one (1) hour after the City work shift begins on the next scheduled work day. Partially completed routine pay items are not to be listed. Late submittal of reports or inclusion of incomplete tasks may result in Liquidated Damages and/or a re-inspection fee charge.

A report listing daily progress or work completed shall be submitted to City within one (1) business day of completion.

The City will inspect the work and approve or disapprove each item for payment. Items found to be incomplete or deficient in workmanship will be noted and a withholding/deficiency notice issued to the Contractor. Deficient or incomplete work must be corrected in accordance with paragraph 12.1B. The withholding notice will be considered official notification of deficiencies. Additional information concerning the specifics of the deficiency will be given to the Contractor upon request.

If after a second inspection by the City, the City Inspector again finds serious deficiencies, or incompleteness, a \$50.00 re-inspection fee will be assessed for each area found in this condition. Accumulated re-inspection fees will be deducted from the Contractor's monthly payment.

The work report forms shall be used by the Contractor in the preparation of payment requests. A consolidated worksheet must be submitted with the Contractor's invoice. Invoices must be numbered and shall reference each work report attached by listing the work report number and/or date and billed amount. All contractor submitted paperwork must contain a company logo.

- 12.3 **Emergency Response:** Contractor will provide the City a twenty-four (24) hour emergency phone number and name of at least two (2) contacts who can be called by City representatives when emergency maintenance conditions occur. The Contractor shall be prepared to respond to emergency request calls on a twenty-four (24) hour, seven (7) day per week basis. "Emergency Request Work" shall mean any work the City requests the Contractor to perform which is in response to an immediate hazard or other emergency as determined by the City. The Contractor shall respond to an emergency within one (1) hour of initial City contact. Failure to respond shall be considered a default of Contract. Repeated failures are subject to termination as set forth in Mesa Standard Terms and Conditions Section 16. The Contractor shall ensure the emergency response crew consists of at least three (3) crew members, vehicles, equipment and tools necessary to properly remove and dispose of tree hazards. During "off duty" hours, the Contractor's crew employees assigned to respond to the emergency shall only take those actions that will enable the problem to be downgraded from an emergency. However, in no case shall a hazardous condition be left uncorrected. On Duty hours shall be defined as Sunday – Saturday, 6:00 AM – 5:00 PM. Work performed under this section is to be compensated per hour of the crew. Bid price should be inclusive of labor, vehicles, equipment, tools and supplies. Travel time will not be compensated. Should an emergency occur within the duration of the contract, the Contractor shall assist with emergency clearing of trees, limbs, and root-balls. The City will notify the Contractor the location(s) or outlying areas for clearing. The Contractor will be responsible for clearing all locations as notified by the City.

The Contractor's crew who responds to each emergency shall fill out a "Work Report" for "Emergency Request Work" with information that explains the emergency call-out and the actions taken to correct the problem. The report shall also indicate the name of the City Employee who called, the time of day when he/she received the call, the time of day upon his/her arrival at the job site and the elapsed time spent on the job site correcting the problem.

Payment for "Emergency Request Work" shall comply with the Contractor's rates listed in the bid documents. However, if the emergency was caused by the Contractor's failure to adequately perform "Routine" or "Extra" maintenance work, no compensation shall be made

for responding to the emergency. The City shall make the determination whether or not payment is due after reviewing the "Emergency Request Work" and the work performed.

13. **OFFICIAL ADDRESSES AND TITLES:** The Official City Representative and overall Contract Administrator is the Business Services Dept. Director, whose address is; City of Mesa Purchasing, 20 E. Main Street, Suite 400 (85201), P. O. BOX 1466, Mesa, Arizona 85211-1466. This person is authorized to approve change orders to the contract.

The Contractor's primary contact for scheduling and inspecting of work is the Parks Contract Representative, who works for and through the Parks Maintenance Supervisor.

14. **LIQUIDATED DAMAGES/PERFORMANCE GUARANTEES:** The City's expectation is that tree pruning, removal or related services performed by the Contractor be completed on schedule and in accordance within contract specifications. If tasks are omitted or not satisfactorily completed, and public safety of City Parks, Basins, Sports Fields, Facilities, medians and right of ways are compromised. The Contractor and City agree upon the following schedule of liquidated damages to be deducted from monies due or to become due to the Contractor. These sums are fixed and agreed upon, not as a penalty, but because the parties agree that the actual loss to the City and to the public caused by the omission of work or substandard performance is impractical and extremely difficult to ascertain.

SITUATION	AMOUNT TO BE DEDUCTED
A. Failure to respond to an emergency call-out and be onsite within one (1) hours.	\$100 per incident
B. Failure to start and satisfactorily complete routine or extra work within the scheduling requirements, or as agree upon.	\$50 per incident
C. Failure to correct deficiencies as specified in the Contract	\$50 per Incident
D. Failure to submit schedules, work plans, or work reports within the dates and times required.	\$50 per incident/day
E. Failure to wear a uniform, display City issued badge with photo identification, and/or have vehicles properly identified with the Contractor's name. (Sec. 8.1. and 9.1)	\$50 per site/day
F. Failure to comply with Vehicle restrictions.	\$50 per incident
G. Failure to return City issued badges of past employees.	\$25 per incident/employee
H. Failure to communicate property damage, vandalism and vehicle accidents within two working hours.	\$50 per incident/site.
I. Failure to meet with City representative within specified timeframes as dictated by this agreement.	\$50 per incident
J. Failure to comply with environmental regulations or disposal requirements.	\$100 per incident

DETAILED SPECIFICATIONS

1. **SCOPE OF WORK:** Maintaining the health and appearance of the City's trees is a high priority for the Parks, Recreation and Community Facilities Department. The Contractor will provide the professional expertise to maintain trees located in the City's Aquatic Complexes, Basins, Cemetery, City Occupied Buildings, Convention Center, Golf Course, Parks, Right-of-Ways, Sports Fields, etc. The Contractor may also be directed to prune trees located on private property. All work shall be started within five (5) business days of a notice to proceed from the City.

- 1.1 **Inspection Report (Risk Assessment):** The Contractor shall provide a Certified Arborist to conduct field inspections on trees selected for evaluation by the City Representative. Contractor must submit an International Society of Arboriculture (ISA) Basic Tree Risk Assessment Form within two (2) business days upon completed inspection (Attachment C). An alternative form may be use if approved by the City Representative.

- 1.2 **Pruning:** The primary goal is emphasis on tree health, structure and overall appearance. No more than twenty-five (25%) percent of live wood or foliage may be removed from the crown of any adult tree. The City may request the following services; structural pruning (young trees), crown cleaning, crown thinning, raising, reduction or restoration depending on tree needs. Pollarding, "heading cuts", or "topping" should only be used in extreme cases as not all trees are able to withstand this type of pruning. All pruning must follow the guidelines and procedures outlined in the publication, *Best Management Practices: Tree Pruning*, by Edward F. Gilman and Sharon J. Lilly.

The Contractor will secure traffic control permitting, if required, prior to commencement of work. The Contractor will be required to meet onsite with a City Representative to review and schedule work. All work defined within the work order must be completed to the satisfaction of the City Representative prior to starting new work orders. Pruning without authorization from the City Representative will not be compensated.

- a. **Group Pruning:** Contractor may be issued a work order for multiple trees to be pruned within a close geographic area. Pruning will be paid per inch diameter of tree trunk measured at 4.5 feet above the ground. Disposal of all material from pruning and trimming is the responsibility of the Contractor and should be included in the bid price.
 - b. **Individual Pruning:** Contractor may be issued a work order for pruning an individual tree to address an issue at a specific location. Pruning will be paid per inch diameter of tree trunk measured at 4.5 feet above the ground. Disposal of all material from pruning and trimming is the responsibility of the Contractor and should be included in the bid price.
 - c. **Palm Tree Pruning:** Contractor may be issued a work order to prune palm trees. Pruning of palm fronds, including the removal of fruit, occurs during the months of July and August. Date Palms are trimmed on an as needed basis. The City will provide a list of locations, palm species and count to the Contractor for review. Once the Contractor has verified the list they will submit a schedule to the City Representative for approval. Palm tree pruning must be completed before September 1st.
 - d. **Line Clearance Pruning:** Contractor shall insure that all personnel are employees of the contractor and are qualified high voltage tree trimmers as set forth in OSHA 1910.269 (a)(2) Tasked Qualified Line Clearing Tree Trimmers to work up to but not in Minimum Approach Distance of energized exposed equipment and conductors. 269(a)(2) Qualified Workers with the properly rated equipment. The Contractor shall not sub-contract any portion of the line clearance work. For line clearance work, Workers, Leads and/or Foreman positions, shall have a minimum of three (3) years' experience in clearing/trimming around high voltage lines up to 69kV. Helpers shall have a minimum of two (2) years trimming experience on electric systems.
- 1.3 **Tree Removal:** Contractor may be issued a work order to remove City tree(s). The Contractor will verify the location and tree with the City Representative prior to notice to

proceed. All tree and tree debris marked for removal will be felled in such a way as to control branches, limbs and other debris to not create a hazard or cause damage to surrounding property or plant material. Tree removal will also include stump removal as described in 2.4. Contractor is responsible for calling Blue Stake prior to commencing work. Holes shall be backfilled with approved topsoil. Debris resulting from grinding and other wood spoils must be removed and disposed of at Contractor's expense. Tree removal will be paid per inch diameter at breast height (DBH).

- 1.4 **Stump Removal:** Contractor may be issued a work order to remove or grind stumps. The Contractor will verify the location and stump with the City Representative prior to notice to proceed. Contractor shall grind stump including any visible buttress roots. Contractor is responsible for calling Blue Stake prior to commencing work. Holes shall be backfilled with approved topsoil. Debris resulting from grinding and other wood spoils must be removed and disposed of at Contractor's expense. Stump removal will be paid per inch diameter.
 - 1.5 **Traffic Control:** It shall be the responsibility of the Contractor to comply with the [City of Mesa Traffic Barricade Manual](#) (latest revision) and, where noted, the [Manual on Uniform Traffic Control Devices](#) (MUTCD) (Latest revision). The Contractor is responsible for furnishing all required temporary traffic control devices (i.e. signs, barricades, cones, etc.) for any planned restrictions to facilitate the work under this agreement. All costs for temporary traffic control used for any work under this agreement shall be included in the bid price. No additional payments will be made to the Contractor for temporary traffic control other than what is provided in this document or as approved by the City Representative. The Contractor shall obtain a [Temporary Traffic Control \(TTC\) Permit](#) from the City of Mesa Transportation Department prior to restricting or closing any street, sidewalk, pedestrian pathway or alley within the City of Mesa. When permissible, a rolling operation is preferred.
 - a. **Single Lane Closure:** 500FT Work Area: Restricting the left or right lane of traffic in one direction for the above-mentioned distance. Restriction requires an Arrow Board in the taper. Prices include delivery, pick-up, setup, takedown, and service of all devices.
 - b. **Single Lane Closure:** 1500FT Work Area: Restricting the left or right lane of traffic in one direction for the above-mentioned distance. Restriction requires an Arrow Board in the taper. Prices include delivery, pick-up, setup, takedown, and service of all devices.
2. **GENERAL MAINTENANCE REQUIREMENTS:** All operations will be conducted to provide maximum safety for the public and minimize disruption of the public use of City streets. While performing work of any type, the tree worker should inspect for any obvious hazards related to trees. All hazardous situations should be corrected or promptly reported to the City. Any structural defect or weakened tree shall be reported to the City's Representative. During operations, the Contractor shall clean sidewalks, roadways, and any other areas littered or soiled by operations. Upon completion of any tree work, the Contractor shall remove remaining excess materials, waste, rubbish, debris, and his/her construction and installation equipment from the premises. Removal and disposal of all debris resulting from tree operations are at the Contractor's expense.
- 2.1 **Quality of Work:** All work shall conform to the pruning standards as noted in the American National Standard Institute, [ANSI A300](#) (Part 1) – 2008 Pruning Standard and the companion publication Best Management Practices, Tree Pruning (Revised 2008). The City Representative shall have complete and sole discretion in determining conformance and acceptability of trees trimmed by the Contractor. Trimmed trees rejected by the City Representative shall be excluded from payment.
 - 2.2 **Safety:** Contractor shall comply with Standards of the Division of Occupational Safety and Health Administration (OSHA) and the American National Standard Institute (ANSI), [Z133.1-1988](#), Safety Requirements.
 - 2.3 **Tree Pruning:** The Contractor shall meet with the City Representative to determine the objectives below.

- a. Structural Pruning is the removal of branches and stems to influence the orientation, spacing, growth rate, strength of attachment, and ultimate size of branches and stems. Structural pruning is used on young and medium-aged trees to encourage a sustainable trunk and branch arrangement.
- b. Crown Pruning or “cleaning out” is the removal of dead, diseased, crowded, weakly attached and low-vigor branches and water sprouts from the entirety of the tree crown. This type of pruning is done to reduce the risk of branches falling from the tree and to reduce the movement of decay, insects, and diseases from dead or dying branches into the rest of the tree. Cleaning is the preferred pruning type for mature trees.
- c. Crown Reduction is used to reduce the height and/or spread of a tree. Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree or shrub. This type of pruning is done to minimize the risk of failure, to reduce height or spread, for signal or street-light clearance, to clear vegetation from buildings or other structures, or to improve the appearance of the tree.
- d. Crown Restoration is corrective pruning used to restore the form of crowns that have been previously damaged by extenuating circumstances. Restoration is the selective removal of branches, sprouts, and stubs from trees that have been lion tailed, broken in a storm, or otherwise damaged. The goal of restoration is to improve a tree structure, form, or appearance.
- e. Crown Raising is the removal of lower branches of a tree to provide clearance for signage, buildings, vehicles and pedestrians. It is important that a tree have at least one-half of its foliage on branches that originate in the lower two-thirds of its crown to ensure a well-formed, tapered structure and to uniformly distribute stress within the tree.
- f. Palm Pruning consists of maintaining the crowns and trunks of palm trees including the pruning of dead or declining fronds, seed pods and the skinning or shaping of spent petiole bases into a ball or nut as applicable by palm type. The Contractor will not use climbing spikes to prune palms. Contractor will be responsible for removing any remaining “hanging” fronds after pruning activities have ceased.

2.4 **Tree Planting:** Contractor shall be responsible for providing and installing new trees, tree staking, adjusting or adding irrigation lines or tubing to root ball. All trees shall be installed per [City of Mesa Standard Detail M-103.02 to M-103.04](#). All newly planted trees shall be warranted for one (1) year by the Contractor and replaced immediately upon failure.

3. **TREE INVENTORY AND WORK MANAGEMENT SOFTWARE APPLICATION:** A robust Tree Inventory and Work Management Software Application is crucial to successfully managing the City’s urban forestry work and is a requirement for award of this contract. The proposed software solution will be evaluated based on its ability to meet the “Required Features” listed, as well as, “Desirable Features” that may be available. The software will be evaluated as a portion of the Contractor’s overall Proposed Solution and will be scored as Fully Meets, Partially Meets, Does Not Meet, and Not Enough Information to Evaluate (Unknown). Ratings of less than Fully Meets will negatively impact this assessment.

A. Software Application Required Features:

1. GIS (Geographic Information System) based and with ability to be linked.
2. Web or Cloud hosted and browser-based. No locally installed systems will be accepted.
3. Must be able to fully integrate the City’s current tree inventory data into the proposed application where it shall be fully accessible (must be demonstrated prior to award).
4. Ownership of all tree inventory data/information, whether integrated from existing records or captured during this contract, is work product that shall be retained by the City of Mesa and upon termination of this agreement shall be returned/provided upon request, in a usable electronic file format (CSV, XML, GIS, etc.).

5. The software contains a mobile application solution that allows access to the database and tree inventory
6. Ability to store, retrieve, update, delete, add tree records, and access work histories from desktop computers or mobile devices (Android and IOS are the preferred operating systems for mobile users).
7. Application shall function in real-time (live) enabling its users, whether desktop or mobile, the ability to simultaneously see, access, and act upon that information.
8. Intuitive/User-friendly interface that is easy to understand and operate, on desktop and mobile versions.
9. The proposed software solution shall clearly identify the physical locations of all inventoried trees and through the use of the following attributes.
 - a. Site name (e.g. Pioneer Park, Basin 318, Mesa City Plaza, etc.).
 - b. Site address.
 - c. Geo-location identifier/pin on GIS Map, display of latitude and longitude coordinates in system.
 - d. Placing a point/pin on a satellite image of a map.
 - e. Entering latitude and longitude coordinates.
 - f. Entering an address.
 - g. Ability to input, access, and edit/update clarifying notes describing the tree's location.
 - h. Entering distances from the tree to a semi-permanent object (fire hydrant, light post, etc.).
 - i. Uploading a ground-level photo of the tree's location.
 - j. Ability to display various map views of tree inventory locations: aerial, satellite, etc.
 - k. Map tools that allow user to measure and capture linear distances between tree location and a fixed object.

B. Software Application Desirable Features:

1. The system allows for the following:
2. The system displays tree specifics along with a representative photograph of the species type and a recommended maintenance field. The tree specifics also contain work history and other relative information.
3. The system maintains maintenance records and all work performed for each location and tree.
4. Is there an ability to group data in to geographic zones or districts?
5. Report on any features that can be customized to the specific needs of the customer.
6. The mobile application allows for work orders to be issued and the ability to view List Track Reports.
7. The system allows for search and query abilities to pull collected data via a reporting dashboard.
8. The system contains the following standard reporting options:
 - a. Inventory
 - b. Work Summary
 - c. Invoice View
 - d. Job Balance
 - e. Recycling
 - f. Work History
 - g. DSH Frequency
 - h. Height Frequency
 - i. District Frequency

- j. Species Frequency
 - k. Work Type by District Frequency
 - l. All Trees and Street Addresses
 - m. Estimated Tree Value
9. The system allows for custom reports to be generated.
10. The system allows for data to be exported to an external system in the following export data types:
- a. Comma-Separated Values (CSV)
 - b. Geographic Information System (GIS) Shape Files
 - c. Extensible Markup Language (XML) Format
 - d. Data formatted for analysis in the USDA Forest Service i-Tree Software
4. **MINIMUM QUALIFICATIONS:** Contractor must have equipment suitable in quantity and quality to perform services listed within this document. Contractor's staff must possess and maintain the necessary certifications required to comply with this contract.

**EXHIBIT B
PRICING**

Pursuant to all the contract specifications enumerated and described in this Request for Proposal, Respondent agrees to furnish Tree Pruning, Removal and Other Related Services to the City of Mesa at the price(s) stated below. All items must be bid in order to be considered responsive.

Item	Description	Estimated Annual Quantity	Unit of Measure	Unit Price	Total Price
	Tree Assessment				
1	Basic Tree Risk Assessment	100	EA	\$ 50.00	\$ 5,000.00
	Group Prune				
2	Trimming up to 4" Diameter at Breast Height (DBH)	100	EA	\$ 10.00	\$ 1,000.00
3	Trimming over 4" to 15" DBH	750	EA	\$ 65.00	\$ 48,750.00
4	Trimming over 15" to 30" DBH	1000	EA	\$ 88.00	\$ 88,000.00
5	Trimming over 30" DBH	150	EA	\$ 248.00	\$ 37,200.00
	Individual Prune				
6	Trimming up to 4" DBH	50	EA	\$ 28.00	\$ 1,400.00
7	Trimming over 4" to 15" DBH	150	EA	\$ 98.00	\$ 14,700.00
8	Trimming over 15" to 30" DBH	200	EA	\$ 198.00	\$ 39,600.00
9	Trimming over 30" DBH	100	EA	\$ 388.00	\$ 38,800.00
	Palm Tree Prune				
10	Trimming up to 15 ft	20	EA	\$ 38.00	\$ 760.00
11	Trimming over 15 ft to 30 ft	100	EA	\$ 38.00	\$ 3,800.00
12	Trimming over 30 ft to 45 ft	25	EA	\$ 48.00	\$ 1,200.00
13	Trimming over 45 ft	50	EA	\$ 48.00	\$ 2,400.00
	Line Clearance Pruning				
14	Palm Tree Prune	50	EA	\$ 48.00	\$ 2,400.00
15	Tree Prune	25	EA	\$ 148.00	\$ 3,700.00
	Tree Removal				
16	Tree removals (Per inch DBH)	600	IN	\$ 32.00	\$ 19,200.00
17	Remove Stump (Per inch diameter)	200	IN	\$ 9.00	\$ 1,800.00
	Tree Planting				
18	Provide and Install 15 Gallon Tree	75	EA	\$ 118.00	\$ 8,850.00
19	Provide and Install 24" box tree	100	EA	\$ 300.00	\$ 30,000.00
20	Provide and Install 36" box tree	50	EA	\$ 600.00	\$ 30,000.00
21	Provide and Install 48" box tree	25	EA	\$ 1,589.00	\$ 39,725.00
	Tree Inventory				
22	GPS Tree Inventory	10,000	EA	\$ 1.00	\$ 10,000.00
	Software Solution				
23	Inventory & Work Management Software	1	ANNUAL	\$ -	\$ -
	Miscellaneous				
24	Crew Rental Hourly Rate	500	HR	\$ 180.00	\$ 90,000.00
25	Single Lane Closure - Up to 500 ft. Work Area	30	Day	\$ 150.00	\$ 4,500.00
26	Single Lane Closure - Up to 1500 ft. Work Area	20	Day	\$ 350.00	\$ 7,000.00
	Total Price				\$ 529,785.00

EMERGENCY RATES

Item	Description	Unit of Measure	Unit Price
Emergency Pruning			
27	Trimming up to 4" DBH	IN	\$ 28.00
28	Trimming over 4" to 15" DBH	IN	\$ 28.00
29	Trimming over 15" to 30" DBH	IN	\$ 38.00
30	Trimming over 30" DBH	IN	\$ 38.00
Emergency Removal			
31	Branch Removals (Per Diameter Inch)	IN	\$ 48.00
32	Tree Removal (Per Diameter Inch)	IN	\$ 48.00

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have a 1.75% removed from the taxable item(s) for the purpose of award evaluation (.125).

DELIVERY: See Mesa Standard Terms and Conditions.

Vendor Name Patrick Mahoney, President
 10/8/2018

Date: 10/16/18
 RFB # 2019033

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution,

dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
 - i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
 - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction, then, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.

10. SALES/USE TAX, OTHER TAXES.

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing

authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
 12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
 - 12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - 12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
 13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
 14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
 15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
 16. **DEFAULT.**
 - a. A party will be in default if that party:

- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or

further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
 - a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be

written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).

37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

The City currently holds or may enter into Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.