



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2020065
UPS PREVENTATIVE SYSTEM MAINTENANCE, REPAIRS, RELATED SERVICES, AND PURCHASE
OF EQUIPMENT, PARTS AND SYSTEMS**

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 450 Mesa, AZ 85201
Attention	Ted Stallings Procurement Officer II
E-Mail	Ted.Stallings@MesaAZ.gov
Phone	(480) 644-2815

With a copy to: City of Mesa – Water Resources
Attn: Greg Flynn, Sr. Fiscal Analyst
P.O. Box 1466
Mesa, AZ 85211-1466
Greg.Flynn@MesaAZ.gov

AND

TITAN POWER, INC., (“Contractor”)

Mailing Address	7031 W. Oakland Street Chandler, AZ 85226
Remit to Address	7031 W. Oakland Street Chandler, AZ 85226
Attention	Stephen Berney
E-Mail	sberney@titanpower.com
Phone	480-968-3191

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 8th day of December, 2020, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Titan Power, Inc., an AZ 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 **202065** ("Solicitation") for **UPS PREVENTATIVE SYSTEM MAINTENANCE, REPAIRS, RELATED SERVICES, AND PURCHASE OF EQUIPMENT, PARTS AND SYSTEMS**, 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 **December 9, 2020** and ending on **December 8, 2024**. 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 one (1) year. 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 Contract expiration or annual anniversary 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. No terms set forth in any invoice, purchase order or similar document issued by Contractor will be deemed accepted by the City; the terms of the contractual relationship between the Parties are as set forth in this Agreement. 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. If applicable, mileage or travel costs; and
- k. Total amount due.

5.6 **Payment of Funds**. Contractor acknowledges the City may, at its option and where available use a Credit Card/Procurement Card to make payment for orders under the Agreement with no additional charge/fee. Otherwise, payment will be through a traditional method of a check.

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 \$2 million per occurrence/\$2 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) Scope of Work / Technical Specifications
 - (B) Pricing
 - (C) Mesa Standard Terms and Conditions
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

TITAN POWER, INC.

By: _____

By: Stephen Berney

Printed Name

Stephen Berney

Printed Name

Title

Chief Operating Officer

Title

Date

12/2/2020

Date

REVIEWED BY:

By: Ted Stallings
Ted Stallings, CPPB
Procurement Officer II

EXHIBIT A
SCOPE OF WORK

1. **SCOPE OF WORK:** To provide uninterruptible power supply (“UPS”) preventative system maintenance, repairs, related services, and purchase of equipment, parts and systems.

Renewals shall be executed when contractor(s) has provided high quality product(s) and service with demonstrated cost containment efforts.

2. **CONTRACTOR RESPONSIBILITY AND EXPECTATIONS:**

- a. Respondent warrants that the materials supplied under this contract are free of liens and shall remain free of liens.
- b. Contractor warrants that any material supplied to the City shall fully conform to all requirements of the contract, and all representations of the Contractor, and shall be fit for all purposes and uses required by the contract.
- c. Contractor shall be responsible for the removal of all materials, debris, and residue resulting from the performance of the service. All work areas shall be maintained in a clean, and orderly manner throughout each workday.
- d. Contractor shall provide telephone or computer network support to the City to correct any defect in the software that materially, and adversely affects the use of the software. Typical tasks may include nights, and weekends to support software failure, testing, modification to existing systems, or other factors that disrupt the City’s use of the software.
- e. Contractor shall provide training to City personnel that will assure proper operation and utilization of the equipment supplied. All manuals necessary for the required training shall be furnished by the Contractor with each equipment order.
- f. Contractor shall provide all equipment, machinery, and chemicals furnished and delivered to the City in compliance with the Safety Regulations as required by OSHA.
- g. Guaranteed thirty (30) minute phone response for emergencies (critical and major).
- h. On-call personnel within fifty (50) mile radius of the City.
- i. Guaranteed two (2) hour maximum on-site for Critical Incidents (emergency) response, seven (7) days/week, twenty-four (24) hours/day.
- j. Emergency replacement parts for all City owned UPS shall be kept on hand and stocked within a fifty (50) mile radius of the City.
- k. The City and awarded Contractor will mutually develop a UPS system battery replacement schedule.
 - i. Replacement batteries must be manufactured and assembled in the United States, said batteries must be meet the same specifications as OEM and be the same dimensions.
 - ii. Installed replacement batteries shall not exceed more than 100 days from manufactured date.
 - iii. Replacement batteries shall be of the same lot and consecutively number.
 - iv. Includes battery disposal or recycling as required, with documentation meeting local and EPA laws and requirements.
- l. Includes one Annual System Preventive Maintenance Service scheduled by the customer between 7am-4pm, Monday-Thursday (excluding city holidays).
- m. Includes 100% labor and travel coverage seven (7) days/week, twenty-four (24) hours/day.
- n. No charge on-site consultation.
- o. A detailed written report of any and all services, including the annual system preventive maintenance service, shall be provided to the customer contact within twenty-four (24) hours after service is complete. Critical and emergency issues/concerns must be provided while on site and in a report format within four (4) hours after service is complete.
- p. Resolution of critical incidents within twenty-four (24) hours.
- q. Resolution of major incidents within four-eight (48) hours.
- r. Resolution of minor incidents within seventy-two (72) hours.
- s. Includes 100% corrective labor and travel coverage seven (7) days/week, twenty-four (24) hours/day.

**EXHIBIT A
SCOPE OF WORK**

3 RESPONDENT PERSONNEL:

- a. All work is to be performed by Contractor's personnel properly licensed, trained, and insured to perform the work.
- b. All work is to be performed in compliance with all applicable codes, standards, due care, and OSHA safety requirements.
- c. Contractor personnel, after passing a required criminal background check, subject to the approval of the City, will be issued card keys and physical keys during initial preventative maintenance visit necessary to access buildings and UPS systems.
- d. During initial preventative maintenance visit, Contractor personnel will be accompanied to each UPS site by City personnel if necessary. Thereafter, Contractor personnel are expected to access and perform on-site work independently unless otherwise required by the City.
- e. Contractor's personnel shall be accompanied and have on-site supervision provided by City personnel where the UPS is in a secure area.

4 UPS PREVENTATIVE MAINTENANCE:

The UPS "System" and "Battery PMs" required shall be in accordance with the manufacturer's operations and maintenance manual and any other applicable documents. In addition, the following are requirements of the maintenance contract as well as items that will need to be checked, recorded, and measured or performed.

- a. ANNUAL FULL UPS PREVENTATIVE MAINTENANCE:
 - i. Annual UPS Preventative Maintenance Service to be performed every fall quarter on all UPS systems includes, at a minimum, all of the following:
 1. Consult with site personnel on the unit (s) performance, history, pending upgrades or noticeable abnormalities, address any questions and discuss schedule of repair.
 2. Review on-site UPS maintenance log prior to start.
 3. Review alarm log/history event file for any irregular activity or events, update time and date.
 4. Check proper clearance around unit.
 5. Perform a complete visual inspection of all internal wiring harnesses, contactors, breakers, inductors, transformers, capacitors, circuit boards, IGBT's, SCR's, transistors, and high voltage assemblies.
 6. Perform temperature check on UPS room for adequate cooling temperature and air flow for optimal UPS and battery performance.
 7. Thermally scan all breakers, major power connections, and associated controls. Report all delta temperatures greater than twenty (20) degrees F on three phase connections.
 8. Measure & record all actual system and LCD meter readings on UPS (+/- 1%)
 9. Review alarm log/history event file for any irregular activity or events, update time and date.
 10. Check fuses on the DC capacitor deck for continuity (if applicable).
 11. Inspect Inverter and rectifier board condition and connections for discoloration, burned or broken wires.
 12. Inspect AC/DC power capacitors for swelling and leakage (if applicable).
 13. Inspect DC vent caps that may have extruded more than 1/8", verify date codes.
 14. Check power supply voltages for stability (flickering LED's) and correct output (+/- 10%).
 15. Inspect Static Switch assembly components including SCR's, driver board, fuses and wiring.

EXHIBIT A
SCOPE OF WORK

16. Measure and record 3 phase harmonic I/O capacitor current readings (within 10% P-P).
17. Verify inverter output waveforms are not clipping and are sinusoidal with digital Oscilloscope.
18. Inspect DC chopper assembly components including chokes, SCR's, capacitors, fuses, and wiring.
19. Check fans for proper operation and rotation, lubricate and check bearings for abnormal condition, as applicable.
20. Check air filters for cleanliness and correct type: clean or replace as needed.
21. Verify all LED's and lights on UPS and Remote Monitoring Panel are operational.
22. Verify Remote Notification System status—web card, modem, BMS, etc.
23. Check and verify the units are operating with current firmware from the manufacturer and update as necessary.
24. Check that any critical OEM field service advisory modifications have been completed Install or perform any manufacturer or engineering field change notices (FNC).
25. Measure and record harmonic trap filter currents.
26. Measure and record phase-to-phase input, output, bypass and battery voltage and currents.
27. Perform functional system test upon customer approval.
28. Perform complete battery PM and adjust charger float settings if necessary.
29. Perform any other manufacturer's recommended preventative maintenance checks not listed above.
30. Upon completion of annual minor preventative maintenance:
31. Review system performance with customer to address any questions and to schedule any repairs.
32. A DETAILED written report of any and all services, including the annual system preventive maintenance service including any deficiencies and corrective action needed, shall be provided to the customer contact within twenty-four (24) hours after service is complete.
33. Critical and emergency issues/concerns must be provided while on site and in a written report format within four (4) hours after service is complete.

9. BATTERY MAINTENANCE:

- a. Annual Battery Preventative Maintenance service to be scheduled by Department.
 - i. **Transfer load to bypass (maintenance bypass if available) and isolate UPS module (when possible).**
 - ii. Check/torque all high voltage input/output/battery bus connections.
 - iii. Inspect all UPS components: inverter, rectifier, static switch, chopper, for signs of defects or stress.
 - iv. **Torque all UPS components: inverter, rectifier, static switch, chopper to specified values.**
 - v. Inspect all UPS magnetics: isolation transformers, inductors, chokes, for signs of defects or stress.
 - vi. Torque all UPS magnetics: isolation transformers, inductors, chokes, to specified values.
 - vii. Check and Verify control parameters/setups if possible.
 - viii. Check and Verify inverter, rectifier, static switch, and control software if possible.
 - ix. Check and adjust internal operating parameters below (not applicable to all makes and models).

EXHIBIT A
SCOPE OF WORK

- x. Rectifier and inverter over/under voltage set points.
 - xi. Ground fault detection set points.
 - xii. Over/under frequency thresholds/set points.
 - xiii. Check and adjust external operating parameters below (not applicable to all makes and models).
 - xiv. UV/OV transfer settings (if digital or analog set point).
 - xv. DC parameters, float voltage, DC current calibration (if necessary).
 - xvi. Rectifier/inv ramp or walk in. UPS frequency slew rate and slew function is on.
 - xvii. Calibrate LCD display to actual values if necessary.
 - xviii. Check DC capacitor fuses for continuity.
 - xix. Simulate actual utility failure, verify rectifier walk in and current limiting (prior approval required). Simulate static switch Emergency Transfer Test (simulate inverter fuse failure)
 - xx. Verify batteries discharge and recharge normally. Check UPS/generator compatibility if necessary (prior approval required).
 - xxi. **Clean external and internal UPS components (using compressed air, vacuum).**
 - xxii. Perform inspection of precision environmental cooling equipment, check temp and performance parameters.
 - xxiii. Perform any other manufacturer's recommended preventative maintenance checks not listed above.
 - xxiv. Upon completion of Major minor preventative maintenance:
 - 1. Review system performance with customer to address any questions and to schedule any repairs.
 - 2. A DETAILED written report of any and all services, including the annual system preventive maintenance service including any deficiencies and corrective action needed, shall be provided to the customer contact within twenty-four (24) hours after service is complete.
 - 3. Critical and emergency issues/concerns must be provided while on site and in a written report format within four (4) hours after service is complete.
- b. Minor UPS Battery Preventative Maintenance Service to be performed every fall quarter on all UPS systems includes, at a minimum, all of the following:
- i. Overall float voltage measured at the battery terminals.
 - ii. Charger output current and voltage—calculated to 2.25-2.27 VP.
 - iii. Verify charger AC ripple current and voltage are within tolerance (varies based on cell type).
 - 1. Typically, no greater than .5% rms of the DC float voltage.
 - 2. Typically, no greater than 5 amps per 100AH of rated capacity.
 - iv. For UPS units that do not produce AC ripple, a Siemens (mhos) readings must be taken using a Midtronics or equivalent meter unit.
 - v. Ambient temperature and the condition of ventilation and monitoring equipment.
 - vi. Visual individual cell condition checks to for corrosion at terminals, cables, racks, or cabinet.
 - vii. Check for NO-OX grease or oil on all connections (if applicable).
 - viii. Check battery cases for proper liquid level (if flooded cells).
 - ix. General appearance, accessibility and cleanliness of the battery, battery rack or cabinet and battery area. Clean normal jar top dirt accumulation (to be done only with battery offline).
 - x. Check cover integrity and check for cracks in cell/unit or leakage of electrolyte.
 - xi. Verify a properly grounded battery rack and check for short to ground.
 - xii. Verify there is no excessive jar/cover distortion.
 - xiii. Internal conductance test of each battery, measured in Siemens (mhos).

**EXHIBIT A
SCOPE OF WORK**

1. This is compared to a known good baseline value from the OEM.
2. 70% capacity = warning, 60% capacity = failure.
- xiv. Cell voltage of each battery.
- xv. AC ripple current on each battery.
- xvi. Inter-cell connection 10% test - Resistance of 10% of random connections tested.
- xvii. Verification of all DC breaker settings.
- xviii. Thermal temperature scan on exposed cells and posts.
- xix. Corrosion removed, and terminals greased if necessary.
- xx. Immediate assessment provided while on site.
- xxi. Record installation date of each battery
- xxii. Upon completion of Major minor preventative maintenance:
 1. A DETAILED written report of any and all services, including the annual system preventive maintenance service including any deficiencies and corrective action needed, shall be provided to the customer contact within twenty-four (24) hours after service is complete.
 2. Critical and emergency issues/concerns must be provided while on site and in a written report format within four (4) hours after service is complete.

10. DIAGNOSTIC AND REPAIR SERVICES:

- a. Contractor shall provide UPS diagnostic and repair services for all listed City UPS systems, as requested by the City, at the hourly rates specified in Attachment A. Contractor shall charge labor at the established rates for normal hours, after hours, weekend hours and holiday hours.
- b. Contractor shall provide UPS Maintenance parts, supplies and equipment for all listed City UPS systems and other locations as requested by the City at a cost not to exceed the markup percentage specified in Attachment A. Upon request of the City, the Contractor must provide the City with its actual paid supplier invoices and statements for parts, supplies and equipment sold to the City to allow the City to verify the correct markup is being applied.
- c. All parts, supplies, materials, and equipment provided to the City are to be new, and from acceptable manufacturers with warranty periods acceptable to the City. Used parts, supplies, materials, or equipment from time-to-time may be acceptable to the City in certain circumstances and it is the City's expectation that the Contractor will notify the City of the availability of such used items when the City considers repairs and replacements. The City may choose to provide needed part(s) to contractor's services technician.
- b. Upon request for service by City personnel, Contractor's service technician shall acknowledge the request with the requestor within thirty (30) minutes – seven (7) days a week, 365 days a year.
- c. The Contractor's service technician is required to be on site and commence work within two (2) hours of initial contact if deemed by City personnel to be an emergency (critical and major) and within four (4) hours if not deemed an emergency by City personnel. The four (4) hour non-emergency response time may be waived by the City personnel if service can wait to be performed during Contractor's normal business hours.
- d. Approval must be received from the City's personnel to perform any repairs or incur any repair expenses.
- e. A service report is to be completed by the technician and retained at the site where the work is performed, and a verbal report is to be provided to the City personnel responsible for the request upon completion of the request.
- f. In case of a UPS failure, or where a UPS will be down longer than twenty-four (24) hours, the Contractor when directed by the City shall provide, connect and maintain a temporary

**EXHIBIT A
SCOPE OF WORK**

UPS with an equivalent or greater output than the City's failed UPS until the failed UPS is repaired or replaced. City will pay Contractor for rental of a UPS at the rates specified in Attachment A.

- g. Includes 100% corrective labor and travel coverage seven (7) days/week, twenty-four (24) hours/day.

11. BATTERY REPLACEMENT:

- a. The Contract will require that UPS system batteries are replaced every four (4) years as part of the City life-cycle program for UPS's.
- b. To maintain that requirement the City requires a set price per battery replacement during this four (4) year contract. This set price shall be all-inclusive of cost of the battery, shipping, installation, and removal of old battery. This set price per battery will make budgeting and purchasing much more efficient.
- c. Batteries must be manufactured and assembled in the United States and meet all OEM requirement for the system being installed.
- d. Along with the set price per battery replacement, each new battery purchased and installed will be covered by a three (3) year warranty. The three (3) year battery warranty includes the cost of the battery, shipping, installation, removal and proper disposal or recycling of old battery. All covered expenses at no cost to the City.

12. INCIDENT/PROBLEM DEFINITIONS:

- a. Critical Incidents
 - i. Resolution of critical incidents within twenty-four (24) hours. A critical incident example would include operational or total failure of the following equipment but is not limited to: Main control board, failed battery causing an open in the battery string, Inverter or Rectifier.
 - ii. A critical incident solution would require an industry qualified technician would be onsite within the required two (2) hour response time from the time of the reported incident with the appropriate replacement parts or equipment based upon availability of the part or equipment which needs replacing. The replacement may be a newer version of equipment as older and discontinued parts may not be available or hard to procure. If the replacement part or equipment is not available, the vendor will make the best effort to obtain the part or equipment as quickly as possible. The vendor will provide an estimate on when this part or equipment will be onsite. If repairs are unable to be made within the required twenty-four (24) hour time period, a complete temporary replacement UPS shall be installed within twenty-four (24) hours of the reported incident.
 - iii. The City's definition of a critical incident is any incident that renders the City's system(s) unusable until the incident is resolved, there are no acceptable alternatives or workarounds available to restore partial and/or temporary service, resolution of the problem is considered to be of utmost priority. *Please note: This is the City's definition of a critical incident; no other definitions or suggested meanings will be considered or acceptable. The City at its sole discretion will determine if an incident is critical based on the above definition.*
- b. Major Incidents
 - i. Resolution of major incidents within forty-eight (48) hours. An example of a major incident is partial or total failure of any of the following equipment but is not limited to: Leaking battery case, System cooling fan.
 - ii. A solution to a major incident would require an industry qualified technician would be onsite the same business day or no later than the business day following the reported incident to diagnose the reported problem, identify and

**EXHIBIT A
SCOPE OF WORK**

order the appropriate replacement part/s or equipment. The technician would take the necessary actions to order parts/equipment and affect the repair within forty-eight (48) hours of the reported major incident. The replacement may be a newer version of equipment as older and discontinued parts may not be available or hard to procure.

- iii. The City's definition of a major incident is any incident that prevents normal operation of the City's system(s) but does not preclude the system(s) usability. There are acceptable alternatives or workarounds available to restore partial and/or temporary service until the problem is resolved. *Please note: This is the City's definition of a major incident; no other definitions or suggested meanings will be considered or acceptable. The City at its sole discretion will determine if an incident is critical based on the above definition.*

c. **Minor Incidents**

- i. Resolution of minor incidents within seventy-two (72) working hours. An example of a solution would include partial or total failure of any of the following equipment but is not limited to: Non-functioning LCD display, alarm buzzer.
- ii. A solution to a minor incident would be an industry qualified technician would be onsite no later than the second business day following the reported incident to diagnose the problem, identify and order the appropriate replacement part/s or equipment. The technician would take the necessary actions to order parts/equipment and affect the repair within seventy-two (72) hours of the reported minor incident. The replacement may be a newer version of equipment as older and discontinued parts may not be available or hard to procure.
- iii. The City's definition of a minor incident is any incident that hinders normal operation of the City's system(s) and does not preclude the system(s) usability but is a non-normal condition. There are acceptable alternatives or workarounds available to restore partial and/or temporary service until the problem is resolved. (By default, a Minor Problem is any incident that cannot be classified as Critical or Major.) *Please note: This is the City's definition of a minor incident; no other definitions or suggested meanings will be considered or acceptable. The City at its sole discretion will determine if an incident is critical based on the above definition.*

13. SCHEDULING:

- a. Respondent shall coordinate all scheduled services at least five (5) business days in advance with:
 - i. Water Resource Department. Contract information shall be provided upon award of contract.
 - ii. Any activity carried out by the Respondent that requires either switching a building to UPS power for testing purposes, or taking a UPS offline for testing or repairs, requires prior approval from each authorized City personnel. Authorization list will be provided upon award of contract by each department. Respondents personnel that do not adhere to this requirement will be responsible for all damage(s) and losses.

14. PRODUCT RECALL:

- a. In the event of any recall notice, or other important notification affecting product and/or container under resulting contract, a notice shall be sent to the Procurement Officer and customer ordering department.
- b. Awarded contractor assumes full responsibility for prompt notification of both the contract administrator and purchases of any product recall in accordance with the applicable State of Arizona and federal regulation.

**EXHIBIT A
SCOPE OF WORK**

15. INVOICING:

- a. Invoices shall be emailed to:
 - i. Water Resources: WaterAcctsPayable@MesaAZ.gov.
- b. Invoices shall include the following:
 - i. Delivery order (DO) #,
 - ii. part number(s),
 - iii. product description,
 - iv. list price, percent discount,
 - v. City cost (contract pricing),
 - vi. freight charge and sales tax (if applicable as many items to be purchased off of this contract will be tax exempt).
- c. Contractor shall not invoice for items not delivered as this will delay payment of entire invoice.
- d. Contractor shall e-mail invoices to appropriate email address above no later than five (5) to seven (7) calendar days after product is received by the City.

16. KEY QUESTIONNAIRE RESPONSES:

Please describe the level of equipment parts availability your firm has for the UPS brands in use by the City.

Response:

Titan Power has a 5,000 square foot warehouse and over \$500,000 worth of OEM spare parts inventory for all major brands of UPS systems. In addition to our own spare parts inventory, Titan Power has partnerships with all UPS OEMs to draw off their inventory if needed. Both Titan Power's warehouse and OEM's parts warehouses are located within 60 mile radius of the City of Mesa. Both warehouses are stocked with basic emergency replacement parts.

Please describe your firm's process for ordering necessary repair parts and typical timeline for UPS brands in use by the City.

Response:

Parts delivery times will vary depending on the part. If Titan Power has the product in its inventory, we will deliver the part to the City of Mesa. If the part is coming directly from a supplier, then the part is delivered per the manufacturer's shipping terms and lead times. In critical situations parts can be expedited. All repair parts are generally coming from original equipment manufacturer and their spare parts inventory.

With Titan Power headquarters being within 10 miles of the City of Mesa, our Field Service Technicians have their own fleet vehicles to expedite delivery and transportation of parts. For larger equipment parts or needs, Titan Power has a 20' stake bed F650 truck with lift gate that can facilitate ground or dock delivery.

As an additional resource, Titan Power has a Southwest Airlines Counter-to-Counter account, which can provide access to parts that are out of state often providing same day delivery

UPS Preventive Maintenance Response:

UPS preventive maintenance services are scheduled to the customer's convenience. Titan Power Field Service Activity Supervisor pro-actively calls each customer well before service is due, to remind and schedule a convenient date and time for the maintenance service.

EXHIBIT A SCOPE OF WORK

UPS Battery Preventive Maintenance Response:

UPS Battery maintenance services are scheduled to the customer's convenience. Titan Power Field Service Activity Supervisor pro-actively calls each customer well before service is due, to remind and schedule a convenient date and time for the maintenance service.

Batteries Response:

Depending on manufacturer stock and lead time, battery availability may vary, however you can expect that batteries will typically be readily available. Titan Power Field Service Engineers will deliver all batteries on-site to the customer location(s). Titan Power utilizes multiple different sources for batteries which increases availability and reduces delivery time. Stocking distributors offer free freight for local deliveries. In the event the batteries are not available locally our stocking distributors can source from over 20 different branch offices that have additional inventory.

Emergency Services Response:

Titan Power is available 24 hours a day, 7 days a week, 365 days a year, to respond to the City of Mesa needs. Contacting Titan Power by phone or email during normal business hours, you will either be transferred directly to the appropriate service manager or technician or they will respond back within 30 minutes to answer questions

over the phone or via email and assess the situation.

After hours emergency needs are handled through our 800 number (800-509-6170). Dispatch would contact the appropriate service manager or technician, and they would then respond back to the caller by phone within 30 minutes.

For emergency calls, if needed, we immediately dispatch Emergency Service directly to your location within a guaranteed response time. A Service Request Ticket would then be opened by our Service Department to track and manage the request as is resolved. (Given that our field technicians are located throughout the Southeast Valley, we can arrive to any location in Mesa within a 2-hour response requirement. We maintain a specialized scheduling process that purposefully leaves several hours of float time each week so that we can promptly respond to emergencies while keeping our scheduled services seamless.) Our guaranteed response time has been our commitment to our customers for over 32 years.

The following is Titan Power's Emergency Dispatch & Escalation Procedure:

1. In the event of an emergency with the equipment, the customer phones Titan Power, Inc.'s (TPI) emergency service number, (800) 509-6170 and logs an emergency service or technical assistance request by providing their *company name, contact, phone number and a description of the problem*.
2. The call is immediately dispatched to the service manager or the on call Service Engineer who will immediately qualify the situation and provide verbal instructions. If it is determined that a site visit is necessary, a qualified field engineer will be dispatched within the hour.
3. Once a field engineer arrives at the customer's site, if he is unable to ascertain the cause of the problem within the next 2 hours, he will contact the service manager and the situation will be placed in an alert status.
4. At this time, the service manager will initiate escalation procedures of contacting additional field engineers and putting these individuals on alert as back up. The on-site field engineer will stay in contact with the service manager and the customer to keep each informed of the progress of the situation.

**EXHIBIT A
SCOPE OF WORK**

5. If the initial field engineer has not been able to identify the problem within 4 hours, the service manager will escalate the level of support, as necessary, and monitor each action taken until the problem is resolved. *After twenty-four (24) hours, this escalation is to include contacting the manufacturer of the power conditioning equipment for assistance or dispatch at Titan Power's expense for its 7/24 Full Service Contract Customers.*

Describe the type of Support offered by your firm, including but not limited to:

Response:

Titan Power support provided to the City of Mesa includes:

Titan Power instills a culture of responsiveness and attention to the needs of the customer that has allowed us to create many long-term client relationships. We respond as though each of our customers' systems is the most important. The organization is designed to provide prompt and efficient response to both customer requests and emergencies. The management at Titan Power not only trains our personnel to be responsive, but managers keep themselves in the response chain.

- **Available hours**

Titan Power is available to respond to our customers' needs 24x7x365. You will always be connected to a Titan Power employee.

- **Technical**

We offer what few others in the industry can - technical expertise combined with a commitment to serve as a trusted advisor to our customers. Titan Power is a comprehensive solutions provider for the critical power and air environment - not just a UPS maintenance company. We stand out from the competition in that we evaluate critical power systems as a whole - beyond just the UPS - to the generator, CRAC, ATS switches and batteries, identifying potential problems and offering total system solutions to our customers. We have the ability to look at the entire power and air infrastructure and understand the inter-workings of your facility to help mitigate any unplanned outages or downtime. From utility power to your desktop UPS, Titan Power can be a valuable resource.

Our services help prevent future operational problems (and costs) that may occur due to a lack of foresight or improper planning. Our solutions also serve to reduce power bills significantly by increasing load efficiencies, releasing system capacity and reducing power losses.

- **UPS Preventive Maintenance**

Titan Power's preventive maintenance inspections on UPS include total systems and battery inspections performed to rigid parameters that meets or exceeds manufacturer specifications. Following every preventive maintenance inspection, Titan Power will furnish a detailed Field Service Report that includes the status of your power supply and batteries in accordance with manufacturer specifications.

- **UPS Battery Preventive Maintenance**

Our UPS battery maintenance services are designed to detect and correct potential issues before they cause problems in your data center – including lost power, corrupted data and system failure. Over 90% of UPS failure is attributed to battery error. As part of our maintenance inspection, Titan Power technicians look for leaking cells, cracked cases, sulphation, etc. Temperature, voltage, and conductance are also measured, tracked, and analyzed. Healthy batteries that support the UPS system are vital to ensuring maximum uptime in your facility. Titan Power also provides turn-key replacement services including recommending the optimal size and model of battery systems that best meet your facility's specific needs.

EXHIBIT A SCOPE OF WORK

Our field technicians are also trained in the proper removal and disposal of your existing battery, installation and testing of the new batteries, and most importantly verifying that the batteries are operating properly within the UPS system. Titan Power offers:

- a solid understanding of intricate interactions between batteries and power equipment
- the expertise to handle logistical requirements of complex UPS battery replacement projects
- power professionals that work with you to provide the optimal battery system that best meets your organizational applications

Our customer preventive maintenance also evaluates UPS capacitors and cooling fans to determine if replacement is required. The inspection includes several aspects of the condition of the equipment such as: age of equipment, signs of over usage or abuse, equipment under environmental extremes, testing outside of tolerance, and manufacturer recommendation for the UPS unit before recommending replacement.

- **Software**

Titan Power utilizes electronic software that provides our customers the ability to log-in to a custom portal to view past and future services, expired and current contracts, Field Service Reports from completed services with the technician's comments and recommendations, and all approved and pending proposals from your Account Representative. This software is a great resource for tracking, reporting and accurate equipment information.

- **Training**

Titan Power Field Service Engineers provide basic product training and provide manufacturer equipment manual(s) to educate the end-user on the operations of all newly installed equipment such as display panels on UPS systems and emergency alerts will be reviewed. All brands and models at the request of customer, Titan Power can provide basic on-site training of existing equipment previously installed. Remedial maintenance and technical repairs should be left to your trained and certified service provider.

If any additional questions arise customer support is available 24x7x365.

Also, we host quarterly Lunch and Learns at our corporate office with customers and staff to stay up-to-date on the latest technologies and advances from leading manufacturers.

- **Turn Key Installation Services: Data Center Design and Build**

Titan Power is a recognized leader in the data center design industry. As a licensed General Contractor, we manage entire turn-key jobs including planning, design, engineering and construction of your data centers and computer rooms. Whether you are expanding, relocating, upgrading or installing a new system, Titan Power provides comprehensive services from initial consultation to UPS battery installation to equipment start-up.

We take the time to thoroughly understand each customer's unique requirements and then offer solutions to maximize system efficiency. Our highly trained team has decades of knowledge in designing and building secure, efficient and cost-effective IT and data center environments.

Titan Power maintains the following contractor licenses:

- Arizona General Commercial License #228490
- Arizona Computer Room Specialty License #216136
- California General Commercial and Electrical License #884661
- Nevada Residential and Small Commercial #77127
- State of AZ Gaming Commission Certification #94639
- Arizona Transaction Privilege Tax License #07393138-V

EXHIBIT A SCOPE OF WORK

- City, State & Municipal Licenses as required to perform work in AZ, NV, CA & CO
- **Products**
Titan Power is approved to buy direct from all major brands of equipment – over 30 of the best and most trusted manufacturers in the industry. As a major player in the industry and with our high sales volumes, we are able to negotiate top-tier level pricing and pass those savings on to our customers. As a Value-Added-Reseller, we are able to provide customized solutions in addition to competitive pricing.

Describe the type of replacement batteries offered by your firm and your methodology for replacement, including but not limited to:

- Do proposed batteries meet minimum RFP requirements:
- Brand(s)
- Availability
- Warranty

Response:

Titan Power follows a standard Method of Procedure (MOP) for all VRLA battery removals and/or replacements as follows:

Personnel:

Titan Power Field Service Engineer (FSE)
Titan Power Furnished Assistant

Conditions:

Weather conditions should be clear with no immediate threat of thunderstorms or other conditions that would increase the risk of loss of utility power. The UPS will be on-line providing filtered and conditioned power to the critical load. The battery system will be completely disconnected from the UPS. Therefore, there will be no battery back-up should utility power be interrupted.

Method of Procedure:

1. New batteries have been delivered and received at the loading dock.
2. Titan Power personnel will move the batteries, via pallet jack, from the loading dock to the UPS room and staged if required.
3. The Titan Power FSE will ask permission to begin.

4. Upon being granted permission, FSE will inspect status and wiring of any and all battery strings associated with the UPS
5. FSE will label wires and connections before performing any sort of battery disconnect. Use wire marking kit if applicable.
6. Review current wiring installation of batteries and, if needed, draw diagram of battery installation and wiring prior to disconnecting cables or demoing batteries.
7. FSE will then electrically disconnect and isolate the batteries from the UPS system.
8. The FSE and assistant will remove all old batteries from the battery cabinet.
9. The FSE will clean new battery terminals in preparation for installation.
10. The FSE and assistant will then install the new batteries into the cabinet and connect all cabling.
11. Post connection torque will be to manufacturer's specifications.
12. The FSE will take voltage readings between the last two connections of the string before making the last connection in the string of batteries.
13. The new battery system will then be electrically re-connected to the UPS system.
14. Old batteries will be palletized and banded by Titan Power.
15. Titan Power personnel will move old batteries from UPS room to dock if required.
16. Titan Power will arrange for pick-up and proper disposal of old batteries per State and Federal EPA regulations.

EXHIBIT A SCOPE OF WORK

Personal Protective Equipment: Hazard Risk Category 0

It is Titan Power's Policy that all FSE's use the following Personal Protective Equipment (PPE) and Clothing according to NFPA 70E table 130.7(C) (9) and 130.7(C) (10):

- Non-melting/untreated natural fiber long-sleeve shirt
- Rubber insulated gloves (IG) with leather protectors (as needed)
- Non-melting/untreated natural fiber long pants
- Insulating hand tools (including flash lights and leads)
- Safety glasses or goggles Leather shoes with steel/composite toe
- Hearing protection

• **Replacement Battery Brands:**

Titan Power is recognized as an expert in UPS battery maintenance and replacement solutions for both VRLA and Wet Cell battery systems. Our trained and experienced Field Service Engineers provide a solid understanding of intricate interactions between batteries and equipment. These technicians have the expertise to handle logistical and management requirements of complex battery replacement projects. Titan Power takes safety responsibility seriously and has included in its safety-training program NFPA 70E Standards.

Titan Power only supplies the top brands of OEM-approved UPS batteries, including the following:



• **Availability**

Depending on manufacturer stock and lead time, battery availability may vary, however you can expect that batteries will typically be readily available. Titan Power Field Service Engineers will deliver all batteries on-site to the customer location(s). Titan Power utilizes multiple different sources for batteries which increases availability and reduces delivery time. Stocking distributors offer free freight for local deliveries. In the event the batteries are not available locally our stocking distributors can source from over 20 different branch offices that have additional inventory.

• **Warranty**

- Titan Power passes on the original manufacturer warranty for all batteries. Typically, this is a 3-year warranty, however some battery manufacturers only offer a 1-year warranty.

**EXHIBIT B
PRICING**

Section A - UPS Preventative Maintenance (PM) Cost

Inclusive of all labor, consumable materials, routine maintenance replacement parts, travel, etc. with the exception of batteries.

Item #	Location ID	Manufacturer, Model and Serial Numbers	PM Type	Year 1	Year 2	Year 3	Year 4*	Year 5*
1	WSSC Server Rm	Eaton, 9390, 30 kVA, EK172CAC05	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
2	SEWRP Admin	Eaton, PW9355, 10 kVA, BF256JBA05	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
3	SEWRP Bldg6	Eaton, PW9355, 10 kVA, BH054JBA01	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
4	SEWRP Bldg10)	Eaton, PW9355, 10 kVA, BG485JBA01	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
5	BRWTP	Leibert N Power, 37SA050AAC6E968, 50 Kva, 37-4446	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
6	BRWTP	Npower Battery Cabinet, 37BP050XHJ1BNL	Annual Full					
7	GWRP Admin	Leibert N Power, 37SA050A0C6EA09, 50 kVA, 37-6348	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
8	GWRP Admin	Npower Battery Cabinet, 37BP050XRJ1BNL, 3T00007872	Annual Full					
9	GWRP Effluent	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-1778,	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
10	GWRP PSPS 2	Eaton, 9355-30, 30 kVA	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
11	GWRP Blower	Leibert NX 30, 38SA030CCHHJ, 30 kVA, 38-1789	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
12	GWRP Headworks 1	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-1791	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
13	GWRP Headworks 2	Eaton, 9355-15, 15 kVA	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
14	GWRP Boiler	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-2020	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
15	GWRP Solids	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-2021	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
16	GWRP RAS/Scum 2	Eaton, 9355-10, 10 kVA	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
17	SBWTP	Eaton, 9355-30, 30 kVA BN493KXXX06	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
18	SBWTP	Eaton, 9390-80/50, 50 kVA, EL352CCC08	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
19	SBWTP	Eaton, 9355-30, 30 kVA, BL441KXX11	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
20	SBWTP	Eaton, 9355-30, 30 kVA, BL291KXX04	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
21	SBWTP	Eaton, 9355-30, 30 kVA, BL441KXXX08	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
22	SBWTP	Eaton, 9390-80/60, 60 kVA, EL322CCC06	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
23	NWWRP Admin	Eaton, 9155-15, 15 kVA, BM517FBB13	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
24	NWWRP Server	Eaton, 9155-8, 8 kVA, BN015FBB02	Annual Full	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00

**EXHIBIT B
PRICING**

Section B - UPS Battery Preventative Maintenance (PM) Cost

Inclusive of all labor, consumable materials, routine maintenance replacement parts, travel, etc.

Item #	Location ID	Manufacturer, Model and Serial Numbers	PM Type	Year 1	Year 2	Year 3	Year 4*	Year 5*
1	WSSC Server Rm	Eaton, 9390, 30 kVA, EK172CAC05	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
2	SEWRP Admin	Eaton, PW9355, 10 kVA, BF256JBA05	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
3	SEWRP Bldg6	Eaton, PW9355, 10 kVA, BH054JBA01	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
4	SEWRP Bldg10	Eaton, PW9355, 10 kVA, BG485JBA01	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
5	BRWTP	Leibert N Power, 37SA050AAC6E968, 50 Kva, 37-4446	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
6	BRWTP	Npower Battery Cabinet, 37BP050XHJ1BNL	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
7	GWRP Admin	Leibert N Power, 37SA050A0C6EA09, 50 kVA, 37-6348	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
8	GWRP Admin	Npower Battery Cabinet, 37BP050XR1BNL, 3T00007872	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
9	GWRP Effluent	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-1778	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
10	GWRP PSPS 2	Eaton, 9355-30, 30 kVA	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
11	GWRP Blower	Leibert NX 30, 38SA030CCHHJ, 30 kVA, 38-1789	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
12	GWRP Headworks 1	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-1791	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
13	GWRP Headworks 2	Eaton, 9355-15, 15 kVA	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
14	GWRP Boiler	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-2020	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
15	GWRP Solids	Leibert NX 30, 38SA030C0CHJ, 30 kVA, 38-2021	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
16	GWRP RAS/Scum 2	Eaton, 9355-10, 10 kVA	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
17	SBWTP	Eaton, 9355-30, 30 kVA BN493KXXX06	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
18	SBWTP	Eaton, 9390-80/50, 50 kVA, EL352CCC08	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
19	SBWTP	Eaton, 9355-30, 30 kVA, BL441KXX11	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
20	SBWTP	Eaton, 9355-30, 30 kVA, BL291KXX04	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
21	SBWTP	Eaton, 9355-30, 30 kVA, BL441KXXX08	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00

**EXHIBIT B
PRICING**

			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
22	SBWTP	Eaton, 9390-80/60, 60 kVA, EL322CCC06	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
23	NWWRP Admin	Eaton, 9155-15, 15 kVA, BM517FBB13	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
24	NWWRP Server	Eaton, 9155-8, 8 kVA, BN015FBB02	Annual	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
			Minor	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00

Section E - Diagnostic, Repair, and Capacitor/Fan Replacement Services

Inclusive of all labor, consumable materials, routine maintenance replacement parts, travel, etc.

The following labor rates shall apply to all on-site work requested to diagnose issues with and/or repair UPS systems.

Item #	Hourly Rate Type	Hourly Rate
1	Technician Weekdays Regular Hours (8:00 am to 5:00 pm)	\$125.00
2	Technician Weekdays After Hours	\$187.50
3	Technician Weekend Hours	\$187.50
4	Technician City Observed Holidays Hours	\$187.50

Section F - Equipment and Parts Percentage Mark-Up

Item #			%
1	Capacitors and Fans	Cost + %	20
2	Batteries, as per specifications contained in RFP 2020065. Markup is inclusive of shipping, delivery, unloading, part consumables and disposal costs/fees.	Cost + %	25
3	Parts Mark-Up not to exceed	Cost + %	
4	New UPS Systems with Batteries	Cost + %	18

Section G - Purchase and Installation of New UPS Systems Mark-Up

Item #	Manufacture		%
1	Eaton	UPS Systems and Installation Services Mark-Up not to exceed	Cost + % 15
2	Mitsubishi	UPS Systems and Installation Services Mark-Up not to exceed	Cost + % 18
3	Toshiba	UPS Systems and Installation Services Mark-Up not to exceed	Cost + % 18

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.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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 with a value of \$100,000 or more, 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 goods and services from Israel.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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, then 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, whether or not related to the Agreement, 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 body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and 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.
- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - b. 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 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.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. 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 any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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 of the Agreement 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 will 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, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the 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. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- 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 demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

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 or materials 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 in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include 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.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

- 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, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
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 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 for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement 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 harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.

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 services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, 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 in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) 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.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of 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 person 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 risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement 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 or loss to City real or personal property when such property is the responsibility of or in the custody of **Contractor or its personnel.**

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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 warranty in section 34, Contractor will without limitation and 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 applicable Purchasing Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
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

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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 sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or 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 herein.
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 A.R.S §§ 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 this 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 if applicable.
47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** By entering into this Agreement, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

49. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards ("PCI DSS") and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City's and/or any customer's credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.