



**AGREEMENT PURSUANT TO SOLICITATION**

**CITY OF MESA AGREEMENT 2022224  
TRANSPORTATION LANDSCAPE MAINTENANCE SERVICES**

**CITY OF MESA, Arizona (“City”)**

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 450 Mesa, AZ 85201
Attention	Jess Romney, NIGP-CPP, CPPB Procurement Supervisor
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With a copy to: City of Mesa – Transportation Department  
Attn: Deryl Smith  
Transportation Field Operations Supervisor  
P.O. Box 1466  
Mesa, AZ 85211-1466  
[Deryl.Smith@MesaAZ.gov](mailto:Deryl.Smith@MesaAZ.gov)

**AND**

**MARIPOSA LANDSCAPE ARIZONA, INC., (“Contractor”)**

Mailing Address	7677 N. 67 <sup>th</sup> Ave Glendale, AZ 85301
Remit to Address	
Attention	Luis Huizar VP of Operations
E-Mail	<a href="mailto:LuisH@Mariposa-AZ.com">LuisH@Mariposa-AZ.com</a>
Telephone	(623) 764-6151
Facsimile	(623) 463-2223

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to Solicitation ("Agreement") is entered into this 21<sup>st</sup> day of June 2022, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **Mariposa Landscape Arizona, Inc.**, a(n) Arizona 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 **2022224** ("Solicitation") for **Transportation Landscape Maintenance Services**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

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

### TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **July 1, 2022** and ending on **June 30, 2025**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately before 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 before 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 before 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 are 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 the 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 adjustments 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 before Contract expiration date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

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

demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

5.5 **Invoices**. Payment will be made to Contractor following the City's receipt of a properly completed invoice. 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; and
- j. 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 before the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Before the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
  - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including Products and 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 the 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 in 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
  - (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.


**RESPONDENT CERTIFICATION**

**By submitting the Response and signing this Certification, the Respondent understands and certifies to all of the following:**

- a) The information provided in Respondent's Response is true and accurate to the best of Respondent's knowledge.
- b) Respondent is under no legal prohibition that would prevent Respondent from contracting with the City of Mesa.
- c) Respondent has read and understands the Solicitation packet as a whole (including attachments, exhibits, and referenced documents) and: (i) can attest that Respondent is in compliance with the requirements of the Solicitation packet; and (ii) is capable of fully carrying out the requirements of the Solicitation as set forth in Respondent's Response.
- d) To Respondent's knowledge, Respondent and Respondent's employees have no known, undisclosed conflicts of interest as defined by applicable law or City of Mesa Procurement Rules. If Respondent or Respondent employees have a known conflict of interest, Respondent has disclosed the conflict in its Response.
- e) Respondent did not engage in any anti-competitive practices related to its Response or the Solicitation. The prices offered by Respondent were independently developed without consultation or collusion with any other Respondents or potential Respondents.
- f) No gifts, payments or other consideration were made to any City employee, officer, elected official, agent, or consultant who has or may have a role in the procurement process for the services/materials covered by the Solicitation.
- g) Respondent grants the City of Mesa permission to copy all parts of its Response including, without limitation, any documents and materials copyrighted by Respondent: (i) for the City's use in evaluating the Response; and (ii) to be disclosed in response to a public records request under Arizona's public records law (A.R.S. § 39-121 et. seq.) or other applicable law, subpoena, or other judicial process provided such disclosure is in accordance with City of Mesa Procurement Rule 6.13.
- h) If a contract is awarded to Respondent as a result of the Response submitted to the Solicitation Respondent will:
  - i. Provide the materials or services specified in the Response in compliance with all applicable federal, state, and local statutes, rules and policies;
  - ii. Honor all elements of the Response submitted by Respondent to the City including, but not limited to, the price and the materials/services to be provided; and
  - iii. Enter into an agreement with the City based on the terms and conditions of the Solicitation and the Response, subject to any negotiated exceptions and terms.
- i) Respondent is current in all obligations due to the City including any amounts owed the City and any licenses/permits required for the general lawful conduct of business. Respondent shall acquire all licenses/permits necessary to lawfully conduct business specific to the Solicitation prior to the execution of a contract with the City pertaining to the Solicitation.
- j) The signatory of this Certification is an officer or duly authorized agent of Respondent with full power and authority to submit binding offers for the goods/services specified herein. Respondent intends by the submission of this Certification to be bound by the terms of the Certification, Solicitation, and Response, subject to any negotiated terms/exceptions.

**ACCEPTED AND AGREED TO BY RESPONDENT:**

Company Name: Mariposa Landscape Arizona, Inc.

Signature: 

Printed Name: Luis Hulzar

Title: Vice President of Operations

Date: 5/11/2022

**City Acceptance of Offer**

The below document will be executed when Agreement is finalized and awarded.

**ACCEPTANCE OF OFFER:**

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number **2022224.**

Awarded this \_\_\_\_\_



Digitally signed by Edward Quedens  
DN: cn=Edward Quedens, o=Ctiy of Mesa, Arizona, ou=Business Services,  
email=ed.quedens@mesaz.gov, c=US  
Date: 2022.06.21 09:45:12 -07'00'  
Adobe Acrobat version: 2022.001.20142

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Edward Quedens, CPPO, C.P.M.  
As Business Services Director

**REVIEWED BY:**

By:   
Jess Romney, NIGP-CPP, CPPB  
Procurement Supervisor



**EXHIBIT A  
SCOPE OF WORK**

1. **SCOPE OF WORK:** Contractor shall provide the City of Mesa's, Transportation Department with professional landscape services for maintaining and replacing landscape assets located within the Right of Way, raised medians, Transit Centers and Bus Stops, Multi-Use Pathways, and other City of Mesa maintained properties.

**Automatic Vehicle Location System (AVLS):** All landscape vehicles used under this contract must have a fully functioning Automatic Vehicle Location System (AVLS). The Contractor shall utilize a complete, singular AVLS for the purpose of monitoring landscape maintenance activities performed under this contract. The AVL system shall be accessible via the internet on a secure website available to authorized City of Mesa staff, with a login and password. At a minimum, daily management reports on all landscape vehicles shall be accessible by the AVL interface to include routes serviced, date/time, and vehicle speed. The AVLS must also produce a GPS path report and map.

- 1.1 **Routine Non-Turf Maintenance:** The Contractor shall provide all labor, equipment, tools and material required for routine maintenance. The City estimates a two (2) week cycle for routine maintenance, but the City may choose to increase frequency to weekly on occasion or scale back to monthly if it is in the best interest of the City. The Contractor will be provided a route schedule and route area map designating the locations and service levels for daily routine maintenance. Routine maintenance will be inspected after the scheduled maintenance day by a Contract Specialist assigned to a specific route area. Failure to perform routine daily maintenance per established schedule will result in nonpayment for the entire day. In the event work was not completed due to inclement weather or unforeseen events, incomplete work may be rescheduled on the Friday of the same cycle upon approval by the Contract Specialist. The Contractor must notify the Contract Specialist via email what areas were missed the following morning to schedule make up work on Friday. Any additions or subtraction to the inventory will require a Square Foot (SF) price adjustment. Routine maintenance shall be paid at the unit price per route day.

1.1.1 **Routine maintenance consists of the following:**

- a. **Cleaning:** Landscape cleaning shall include, but is not limited to, removal of all weeds, dead landscape plants (dead plants that can be removed by manually pulling or using a shovel and/or pickaxe), trash, debris, and rubble that have accumulated on the site regardless of the source. All debris in, around, and under plants. Grasses, weeds, and invasive plant species growing in cracks in adjacent walkways, driveways, parking areas, planters, or other surfaces within or bordering the landscape area shall be removed in each maintenance cycle. Banners, signs, flyers and similar items or parts thereof in the City's landscape shall be removed as part of cleaning and must be reflected in the price for routine maintenance.
- b. **Vegetation Clearance:** All vegetation must always be a minimum clearance of fourteen (14) feet over vehicular traffic ways and eight (8) feet over walkways. Shrubs and ground cover should be trimmed to a point behind the sidewalk and curb. The cost for clearance pruning is considered routine maintenance and must be reflected in the price for routine maintenance.
- c. **Sight Visibility Triangles:** Trimming of vegetation to provide clear visibility within the Sight Visibility Triangle (SVT) for sight distance obstructions for pedestrians, cyclists and vehicular traffic is also required and is considered routine maintenance. The cost of maintaining a clear SVT must be reflected in the price for routine maintenance.
- d. **Weeds:** The Contractor will be required to schedule and apply pre-emergent herbicide two (2) times per year. The Contractor will complete and submit to the City a spray log for documentation. Existing weeds need to be removed by any

mechanical means. Applications of post-emergent can be applied but application is not considered removal of weeds. The Contractor must keep on file all herbicide records and they shall be made available to the City when requested. Weeds that have been treated with chemicals must be removed prior to City inspection for the area to pass routine maintenance inspections. The cost for both pre and post herbicide application must be reflected in the price for routine maintenance.

- e. **Raking of Non-Turf Areas:** The surface of the landscape areas shall be left with a clean, smooth, neat, appearance i.e. no ruts, holes, or uneven appearance. Cleaning the landscape shall include removing build-up of dirt and debris around, inside of and under all vegetation. Debris, leaves, and all other matter must never be blown or raked onto streets, sidewalks, or other adjacent areas. All debris shall be immediately removed and hauled away at the Contractor's expense. The cost for maintaining a clean, smooth, neat landscape area must be reflected in the unit price for routine maintenance.

**Weekly Maintenance:** Maintenance is performed once a week unless otherwise noted and consists of routine maintenance items described in section 1.1. Weeds or weed growth in the landscape area is not permitted. Contractor is responsible for materials and methods used to ensure no weed growth.

**Bi-Weekly Maintenance:** Maintenance is performed once every two (2) weeks unless otherwise noted and consists of routine maintenance items described in section 1.1. Weeds or weed growth in a landscape area cannot exceed one (1) inch in height and must not exceed ten (10%) percent of the landscape area. Contractor is responsible for materials and methods used to control weed growth.

**Monthly Maintenance:** Maintenance is performed once a month unless otherwise noted and consists of routine maintenance items described in section 1.1. Weeds or weed growth in a landscape area cannot exceed two (2) inches in height and must not exceed fifteen (15%) percent of the landscape area. Contractor is responsible for materials and methods used to control weed growth.

- 1.2 **Turf Maintenance:** The Contractor shall provide all labor, equipment, tools, and material required for turf maintenance. Turf locations managed by the Transportation Department are typically located adjacent to City sidewalks and within medians. The City estimates a two (2) week cycle for routine maintenance, but the City may choose to increase the frequency to weekly on occasion or scale back to monthly if it is in the best interest of the City. The Department supports efforts to conserve water and allows the turf areas to go dormant in the winter. Turf maintenance will be inspected by a Contract Specialist assigned to a specific route area for completion of all tasks below. Failure to perform routine daily maintenance per established schedule will result in nonpayment for the entire day. In the event work was not completed due to inclement weather or unforeseen events it may be rescheduled on the Friday of the same cycle upon approval by the Contract Specialist. The Contractor must notify the Contract Specialist via email what areas were missed the following morning to schedule make up work on Friday. Any additions or subtraction to the inventory will require a SF price adjustment. Routine Turf Maintenance shall be paid at the unit price per route day.

1.2.1 **Turf maintenance consists of the following:**

- a. **Cleaning:** The Contractor is also responsible to clean and dispose of trash and plant debris in the turf area immediately before and after every mow.
- b. **Mowing:** All turf shall be mowed and edged to a uniform height of two (2) inches. Uneven cutting, ridges and scalping are not acceptable. Grass clippings shall be properly mulched and can be left in place. If clippings are improperly mulched resulting in clumps, ridges, or thick visible layers, those clippings shall be removed and disposed of at the Contractor's expense.

- c. **Edging:** Edging along all walks and curb areas with a motorized edger is required every second mowing. Edging shall be no wider than two (2) inches from edge of sidewalk/curb to lawn surface. All edging debris shall be removed from the site. Turf areas around trees, objects and structures that cannot be addressed with a mower can be trimmed using a string trimmer. Damage to trees due to trimming shall result in the Contractor removing and replacing the tree at the Contractor's expense.
- d. **Irrigation Inspection:** When routine turf maintenance has been completed, the turf areas shall be visually inspected by the Contractor to ensure there is no damage to sprinklers or any other part of the irrigation system. Any damage to the sprinkler system and its parts caused by the mowing operation must be replaced and repaired immediately and at the Contractor's expense.

**Weekly Turf Maintenance:** Turf maintenance is performed once a week (seasonal-summer) unless otherwise noted and consists of items described in section 1.2. Weed growth cannot exceed five (5%) percent of the turf area. Contractor is responsible for materials and methods used to control weed growth.

**Bi-Weekly Turf Maintenance:** Turf maintenance is performed once every two (2) weeks unless otherwise noted and consists of maintenance items described in section 1.2. Weed growth cannot exceed fifteen (15%) percent of the turf area. Contractor is responsible for materials and methods used to control weed growth.

**Monthly Turf Maintenance:** Turf maintenance is performed once a month (seasonal-winter) unless otherwise noted and consists of routine maintenance items described in section 1.2. Weed control is limited to legal requirements for noxious weeds. Contractor is responsible for materials and methods used to control noxious weeds.

1.2.2 **Non-Routine Turf Maintenance:** Non-routine turf maintenance shall be scheduled according to the best management practices.

- a. **Fertilization:** The Contractor shall be responsible for the scheduling of turf fertilization in all turf areas once per year (May-June). Contractor shall provide and apply fertilizer by broadcast method to provide an even and uniform distribution of the material. Fertilizer should be applied per manufacturers' method and rate. Unit price should be inclusive of crews, labor, vehicles, equipment, tools, supplies, hauling and disposal costs.
- b. **Dethatching:** The Contractor shall be responsible for scheduling dethatching in all turf areas once a year. Thatch should be mechanically removed using dethatching equipment with vertically rotating blades or a power rake once a year (May-June). Thatch shall be removed and disposed of by the Contractor. Unit price should be inclusive of crews, labor, vehicles, equipment, tools, supplies, hauling and disposal costs.
- c. **Core Aeration:** The Contractor shall be responsible for scheduling core aeration in all turf areas once a year (May-June). Aeration shall be done with a core aerator that has the capability of penetrating to a depth of three (3) inches. Cores may be left in place instead of raking-up and disposing of cores. Unit price should be inclusive of crews, labor, vehicles, equipment, tools, supplies, hauling and disposal costs.
- d. **Turf Repair Sodding:** Contractor shall provide and install turf grass sod at the request of a Contract Specialist assigned to the route area. The Contractor is responsible for the health of the newly installed turf and will oversee the establishment period by programming the irrigation controller and adjusting the irrigation system as needed. The failure of newly installed turf shall be replaced at the Contractor's expense. Turf repair, sodding will be paid by the square foot and all labor, equipment, tools, and materials shall be included in the unit cost.

1.3 **Irrigation Maintenance:** The Transportation Department is responsible for the operation of nearly 360 controllers comprising of over 1800 stations covering 245 acres. The Contractor will maintain a variety of systems including Calsense, Hunter and Rain Master brands. The Contractor shall ensure functionality of the irrigation system by providing acceptable staffing, system support i.e., audits, system inspections, seasonal scheduling, and repairs. Plant materials that are damaged due to system neglect, lack of water or overwatering (when the Contractor has control) shall be replaced or returned to health at the Contractor's expense. The Contractor is required to equip a vehicle(s) with a sufficient supply of parts to make repairs during routine maintenance.

1.3.1 **Routine Irrigation System Inspections and Repairs:** Irrigation inspections shall be scheduled at least once a month and additionally, when requested by the Contract Specialist.

- a. **Irrigation Inspections:** Irrigation inspections shall be paid by the active station count. The Contractor will run the controller in test mode and observe the entire irrigation zone to visually inspect for breaks in the system, coverage, and effectiveness. The Contractor shall complete an irrigation inspection log in which the Contractor shall record observations regarding the system, minor repairs completed, and major repairs to be discussed with a City of Mesa Contract Specialist. The Contractor shall make minor repairs to the system at no additional cost to the City.
- b. **Minor repairs:** Irrigation problems requiring repair that are discovered during an inspection or previously recommended for repair, shall be documented on the inspection log, and completed during the day of the monthly inspection using Contractor supplied parts. The Contractor must inform the Contract Specialist in writing if the Contractor cannot make necessary repairs to the system. The Contractor must state the reason the repair could not be completed.
- c. **Controller schedules:** The Contractor will be required to make seasonal changes to the schedule and document changes on the Irrigation Controller Inspection form at least twice a year. The Contractor shall ensure all information on the irrigation form is accurate and updated with the most current schedule.

1.3.2 **Non-Routine Irrigation Maintenance:** The following maintenance services shall include all labor, vehicles, equipment, tools, and supplies needed to complete the work. Travel time will not be compensated.

- a. **Major repairs:** When major repairs to the system are needed the Contractor will meet with the Contract Specialist to review intended repairs. The Contractor will submit a maintenance log to the Contract Specialist. The Contract Specialist will generate a work order based upon the irrigation log and the expectations agreed upon when meeting with the Contractors Irrigation Technician. The Contract Specialist will issue the work order as a Notice to Proceed. The Contractor should not begin a major irrigation repair without a complete written work order from a City of Mesa Contract Specialist. The Contractor's Irrigation Technician will schedule a meeting with the City of Mesa Contract Specialist onsite to receive the City provided parts and make the repair(s).
- b. **Irrigation Troubleshooting:** The Contractor shall provide, upon request, an irrigation crew consisting of an IA - Certified Irrigation Technician (or equivalent certification as determined by City Representative) and a general laborer to investigate, diagnose or map an irrigation system. Once the issue has been discovered the Contractor shall meet with the Contract Specialist to schedule repairs. The hourly rate for troubleshooting does not cover repair work. Work performed under this section is to be compensated per man hour of the entire crew.

- c. **Repair and Install City Provided Parts:** The Contractor shall provide an Irrigation Technician to make repairs to an irrigation system requiring parts that are not included on the parts list, provided by the Contractor. The Contractor will be compensated for the Irrigation Technician on an hourly basis (with a minimum of one (1) hour). Repairs shall be made during the time a City Representative is available to oversee the work (Monday-Thursday).
  - d. **Manual Watering:** Manual watering (when ordered by the City) will be paid for at the price agreed upon and authorized by a Work Order. The payment for manual watering shall only be made for reasonable amounts of time required to set up equipment, adjust for coverage, occasional monitoring, and breakdown of equipment.
- 1.4 **Tree and Vegetation Non-Routine Maintenance:** The Contractor shall provide all labor, equipment, tools, and material required for tree and vegetation maintenance care. The Contractor shall follow pruning frequencies and preferred methods of pruning and the removal for trees, shrubs, ground covers and accent plants as outlined in Sustainable Landscape Management: Standards for Landscape Care in the Desert Southwest. The Contractor shall have a dedicated crew for tree and vegetation care that is not the same as the crew for routine maintenance. Work will be performed in such a manner as to encourage and maintain the healthy growth and vigor of the plant and safely remove hazards. Shearing of plants is unacceptable and any plant damage resulting from improper pruning techniques may result in the Contractor removing and replacing damaged plant(s) at no cost to the City. During non-routine maintenance, the Contractor will continuously ensure work site and surrounding areas remain clear of potential hazards to the traveling public and disposed of at Contractor's expense. All clippings and debris resulting from maintenance operations shall be picked up immediately prior to leaving site. Disposal of all material from pruning and removal is the responsibility of the Contractor.
- 1.4.1 **Pruning - Groundcover and/or Shrubs:** The Contractor shall prune groundcover and shrubs at the direction of the City representative. Typically, the pruning will be completed once a year. Groundcover and shrub pruning will be compensated per each groundcover or shrub that has been identified for pruning. Contractor should verify quantities on City issued work order and inform the City representative of any discrepancies on count before proceeding with work.
  - 1.4.2 **Pruning - Ornamental Grass:** The Contractor shall prune grasses at the direction of the City representative. Pruning will be compensated per each ornamental grass that has been identified for pruning. Typically, the pruning will be completed once a year. Contractor should verify quantities on City issued work order and inform the City representative of any discrepancies on count before proceeding with work.
  - 1.4.3 **Pruning - Cacti & Succulent:** The Contractor shall prune cacti and succulent plants at the direction of the City representative. Pruning will be compensated per each cactus or succulent that has been identified for pruning. Typically, the pruning will be completed as needed. Contractor should verify quantities on City issued work order and inform the City representative of any discrepancies on count before proceeding with work.
  - 1.4.4 **Tree Pruning:** The Contractor shall meet with the City Representative to determine the objectives below. All tree care will be conducted per American National Standards Institute (ANSI) Standards and supervised by a Certified Arborist International Society of Arboriculture (ISA). No more than fifteen (15%) percent of live wood or foliage may be removed from the crown of any tree. All pruning cuts are to be made in such a manner as to favor wound closure by natural callus growth and special care is to be taken to leave the branch collar intact. Pruning shall be paid at the unit price for a tree measured at Diameter Breast Height (DBH). No pruning shall be made on trees over fifteen (15) inches DBH. The Contractor shall confirm the type of pruning requested on a City issued work order before proceeding with work. All

tree care will be conducted per ANSI standards, A300 and Z133 and supervised by an ISA Certified Arborist.

- a. Structural Pruning is the removal of branches and stems to influence the orientation, spacing, growth rate, strength of attachment, and ultimate size of branches and stems. Structural pruning is used on young and medium-aged trees to encourage a sustainable trunk and branch arrangement.
- b. Crown Pruning or “cleaning out” is the removal of dead, diseased, crowded, weakly attached and low-vigor branches and water sprouts from the entirety of the tree crown. This type of pruning is done to reduce the risk of branches falling from the tree and to reduce the movement of decay, insects, and diseases from dead or dying branches into the rest of the tree. Cleaning is the preferred pruning type for mature trees.
- c. Crown Reduction is used to reduce the height and/or spread of a tree. Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree or shrub. This type of pruning is done to minimize the risk of failure, to reduce height or spread, for signal or street-light clearance, to clear vegetation from buildings or other structures, or to improve the appearance of the tree.

1.4.5 **Tree Removal:** All tree and tree debris marked for removal will be felled in such a way as to control branches, limbs, and other debris to not create a hazard or cause damage to surrounding structures or plant material. Tree removal includes the entire tree including the grinding of stumps and visible buttress roots three (3) inches or over in diameter. Contractor is responsible for calling Arizona 811, Underground Utility Locating prior to commencing work. All holes shall be backfilled; as well as all debris cleaned up and disposed of at Contractor’s expense. Removal of felled trees shall be paid at the unit price of the DBH. Trees that have fallen will be considered and Event and paid for under section 1.7.

1.4.6 **Stump Grinding:** Contractor shall grind stump(s) to a depth of ten to twelve (10-12) inches. Contractor is responsible for calling Arizona 811, Underground Utility Locating prior to commencing work. All holes shall be backfilled; as well as all debris cleaned up and disposed of at the Contractor’s expense.

1.5 **Plant Replacement - Shrubs, Cactus, Succulents & Groundcover:** Contractor shall replace missing plants in established landscape areas not considered for future refurbishment projects. Locations for plants shall be marked on the ground by the City and reviewed by the Contractor before any plant pits are dug. Blue Staking shall be the responsibility of the Contractor before any planting begins. Fertilization, adjusting the timer schedule, extending, or adding tubing during planting is considered plant replacement and costs should be reflected in the unit price. There will be a thirty (30) day warranty period for all newly planted shrubs, groundcover, cactus, and succulents to ensure the overall health of the plants. Plants shall be five (5) gallon or fifteen (15) gallon containers.

1.6 **Tree Installation and Young Tree Care:** Contractor shall replace missing trees in established landscape areas not considered for refurbishment projects when requested with a City issued work order. Locations for trees shall be marked on the ground by the City and reviewed by the Contractor before any tree wells are dug. Blue Staking shall be the responsibility of the Contractor before any tree pits are dug. In addition to tree installation the Contractor will be required to perform young tree maintenance as needed on each newly planted tree after planting to ensure the successful growth of the tree. There will be a thirty (30) day warranty period for newly installed trees including young tree care services to ensure the overall health of the trees. Fertilization, tree staking, adjusting the timer schedule, extending, or adding tubing during planting is considered part of tree replacement and costs should be reflected in the unit price.

1.6.1 **Young tree care for newly planted trees includes the following:**

- a. Root and crown inspection to identify potential problems.
- b. Clean and clear the basin surrounding the tree of and weeds, debris, and unwanted suckers.
- c. Inspect for proper staking and adjust if necessary.
- d. Remove stakes if the stakes are no longer needed.
- e. Inspect trunk protection add if necessary.
- f. Remove dead, broken, crossing, rubbing, overlapping branches to further development of a tree canopy in keeping with the species, habit, and form of the tree in each unique location.
- g. Check for pest, disease, or deformity.
- h. Check watering levels and manually water if needed.

1.7 **Storm or Event Clean-up:** Contractor will provide the City a twenty-four (24) hour emergency phone number and name of at least two (2) contacts who can be called by City representatives when storm or event clean-up conditions occur. The Contractor shall respond to a call out for clean-up services within two (2) hours of initial City contact. The Contractor shall ensure the responding crew consists of at least (2) two crew members, vehicles, equipment, and tools necessary to properly remove and dispose of trees, stumps, shrubs, or other landscape materials that need to be removed from City maintained landscape areas or coming from City landscape. Work performed under this line item is to be compensated per hour for crew. Unit price should be inclusive of crews, labor, vehicles, equipment, tools, supplies, hauling and disposal costs. The minimum charge for storm or event clean-up will be (3) hours at the hourly rate quoted by this contract.

1.8 **Technical Specifications:** The Contractor shall follow the Technical Specifications stated in this contract as they apply to the specific work being performed under this contract. The Contractor shall use only the parts listed in the technical drawings for repairs & installation work unless a substitute has been authorized by the City Representative.

1.8.1 **Irrigation Maintenance:** The Contractor shall follow the Irrigation Association and American Society of Irrigation Consultants, Best Management Practices for Landscape Irrigation "Landscape-Irrigation-BMPs".

1.8.2 **Tree and Vegetation Maintenance:** The Contractor shall follow the maintenance and scheduling of vegetation care referenced in Sustainable Landscape Management: Standards for Landscape Care in the Desert Southwest, written by Janet Waibel, Landscape Architect. Work covered under these standards are tree care, vegetation pruning, turf management, fertilizers, pesticide & herbicide applications.

\*All tree care will be conducted per ANSI standards, A300 and Z133 and supervised by an ISA Certified Arborist.

1.8.3 **Installation of Plant and Irrigation Materials:** All plant and tree installations shall be performed using the most current Mesa Standard Details and Specifications for Public Works Construction.

1.8.4 **Temporary Traffic Control:** It shall be the responsibility of the Contractor to comply with the City of Mesa Traffic Barricade Manual (latest revision) and, where noted, the Manual on Uniform Traffic Control Devices (MUTCD) (Latest revision). All costs for temporary traffic control used for any work under this Agreement shall be included in the bid price.

1.9 **Special Terms and Conditions:**

1.9.1 **Contractor Performance:** The City's Inspector or other authorized representative will decide all questions arising as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's Inspector, or authorized representative, performance becomes unsatisfactory, the City shall notify the

Contractor. In the event the unsatisfactory performance is not corrected within the time specified by the City Inspector, the City shall have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the Agreement for default.

- 1.9.2 **Local Office:** Throughout the period of this contract, the Contractor shall establish and maintain a local office and an authorized managing agent. The local office shall be within a one (1) hour drive time from the contract area. Contractor's local managing agent shall serve as the point of contact for dealing and communicating with the City. Upon City request, the General Manager, President, or their designee shall meet with City representatives within twenty-four (24) hours of receiving notice.
- 1.9.3 **City Contact:** The Contractor's primary contact will be the Contract Specialist, or the City's authorized representative, in all matters pertaining to work orders, invoice authorization, schedule approvals or daily performance of this contract.
- 1.9.4 **Electronic Devices:** The Contractor shall supply the Contractor's field supervisors/crew leaders and irrigation technicians with smart phones or tablets and must be kept in working condition. Electronic devices such as smartphones, tablets, laptops, and cameras shall be used to communicate work orders, report on job status, and to substantiate completed work.
- 1.9.5 **Field Staff:** The Contractor shall furnish enough qualified field staff to perform the work specified in this contract. The Contractor's staff will include but not limited to; field supervisors/crew leaders, irrigation technicians, laborers, and other crew members during the term of this contract.

The field supervisors/crew leaders and irrigation technicians must speak, read, write in English, and can use electronic devices as described in section 1.9.4. The field supervisors/crew leaders and Irrigation Technicians shall be available during work hours to address problems, conduct field inspections and be available to attend impromptu onsite meetings with the City Representative.

- 1.9.6 **Vehicles and Equipment:** The Contractor will provide and maintain equipment sufficient in number, condition, and capacity to efficiently perform the work and render the services required by this contract. The Contractor's vehicles and equipment shall be neat in appearance and easily identified. Contractor's vehicles and equipment shall be maintained in a safe and mechanically sound working condition. Identification on Contractor's vehicles shall consist of, at a minimum, company name and local telephone number. All trucks and other equipment shall follow all applicable federal, state, and local rules and regulations. All trucks and other equipment shall be equipped with a back-up alarm and rotating flashers, strobe lights or light bar.

The Contractor will provide and maintain irrigation vehicles that are well stocked with parts to make minor repairs to the irrigation system.

Handheld blower usage can be performed if done in a manner that does not create a public inconvenience and follows air quality regulations.

The City reserves the right to inspect the Contractor's equipment at any time to ascertain said condition. The City does not provide areas for staging or storage. The Contractor is responsible for securing and storing all vehicles, materials, supplies and/or equipment.

The City Representative will have the right to stop Contractor's work immediately, if the City Representative deems any vehicle to be unsafe or unsatisfactory while performing work under this contract. Work will not resume until the conditions are corrected and Contractor receives approval from the City Representative.



- 1.9.7 **Work Area:** The Contractor will keep the work area safe for all residents, bicyclists, motorists, and pedestrians during maintenance and project operations. Contractor will, upon completion of the work, leave the public right of way/worksite in a neat and clean condition. Contractor shall wear Safety vest or high visibility clothing that meets ANSI Class II or better shall be always worn by Contractor employees while working on site. The Contractor's staff shall be required to wear safety apparel (i.e., eye, ear, face protection, etc.) when using equipment such as, but not limited to blowers, chippers, chain saws, etc.
- 1.9.8 **Dust Control:** The Contractor will transport and dispose of all debris from field operations in accordance with all City, County, State, and Federal requirements. Green waste and other materials are not to be off loaded at temporary storage sites within the public right-of-way and the City will not provide a location for temporary storage. Contractor will be solely responsible for any dumping/disposal fees and liability thereof.
- 1.9.9 **Debris Disposal:** The Contractor will transport and dispose of all debris from field operations in accordance with all City, County, State, and Federal requirements. Green waste and other materials are not to be off loaded at temporary storage sites within the public right-of-way and the City will not provide a location for temporary storage. Contractor will be solely responsible for any dumping/disposal fees and liability thereof.
- 1.9.10 **Reporting:** The Contractor shall submit all proposed schedules and reports to the City Representative electronically by email at the time frame specified in this contract.
- 1.9.11 **Holidays:** The following is a list of holidays for which Landscape services will not be performed under this contract, unless otherwise approved by a City Representative:
- New Year's Day – January 1st
  - Martin Luther King Day – Third Monday in January
  - President's Day – Third Monday in February
  - Memorial Day – Last Monday in May
  - Independence Day – July 4th
  - Labor Day – First Monday in September
  - Veteran's Day – November 11th
  - Thanksgiving Holiday – Fourth Thursday in November
  - Day after Thanksgiving – Fourth Friday in November
  - Christmas Day - December 25th

During the week of a holiday, Contractor shall adjust the weekly schedule and return to the normal weekly schedule the following week. All such adjustments must be submitted via email and approved by the City Representative. Holiday landscape schedules must be submitted to the City Representative ten (10) days prior to the holiday.

- 1.9.12 **Weather Suspension of Work:** The City of Mesa Representative reserves the right to be the sole judge if the weather is too inclement to work. When adverse weather interrupts landscape maintenance or landscape refurbishment operations the Contractor shall adjust the work schedule and return to the pre-determined schedule as soon as possible. The City reserves the right to direct schedule changes made necessary due to inclement weather. In the event of a rain-day, Contractor's managing agent or designee shall obtain approval from the City of Mesa Representative for the day's maintenance.

**EXHIBIT B  
PRICING**

**PRICING AND COMPENSATION**

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish **Transportation Landscape Maintenance Services** to the City of Mesa at the price(s) stated below. All items must be bid in order to be considered responsive.

Landscape Maintenance					
Unit prices for all items must be expressed using no more than two (2) decimal places.					
Line	Description	Qty	Unit	Unit Price	Cost
<b>Routine Non-Turf Maintenance</b>					
1	R1W1D1 (329,874sf)	26	EA	\$ 1,877.92	\$ 48,825.92
2	R1W1D2 (281,488sf)	26	EA	\$ 1,579.43	\$ 41,065.18
3	R1W1D3 (300,600sf)	26	EA	\$ 1,686.67	\$ 43,853.42
4	R1W1D4 (315,727sf)	26	EA	\$ 1,771.54	\$ 46,060.04
5	R1W2D1 (215,116sf)	26	EA	\$ 1,129.36	\$ 29,363.36
6	R1W2D2 (286,882sf)	26	EA	\$ 1,609.69	\$ 41,851.94
7	R1W2D3 (314,497sf)	26	EA	\$ 1,764.64	\$ 45,880.64
8	R1W2D4 (326,136sf)	26	EA	\$ 1,856.64	\$ 48,272.64
9	R2W1D1 (261,627sf)	26	EA	\$ 1,489.40	\$ 38,724.40
10	R2W1D2 (264,507sf)	26	EA	\$ 1,505.79	\$ 39,150.54
11	R2W1D3 (232,502sf)	26	EA	\$ 1,304.57	\$ 33,918.82
12	R2W1D4 (239,571sf)	26	EA	\$ 1,344.23	\$ 34,949.98
13	R2W2D1 (215,536sf)	26	EA	\$ 1,227.01	\$ 31,902.26
14	R2W2D2 (229,325sf)	26	EA	\$ 1,286.74	\$ 33,455.24
15	R2W2D3 (241,654sf)	26	EA	\$ 1,268.68	\$ 32,985.68
16	R2W2D4 (262,139sf)	26	EA	\$ 1,470.86	\$ 38,242.36
17	R3W1D1 (321,576sf)	26	EA	\$ 1,804.36	\$ 46,913.36
18	R3W1D2 (305,770sf)	26	EA	\$ 1,715.68	\$ 44,607.68
19	R3W1D3 (301,278sf)	26	EA	\$ 1,715.12	\$ 44,593.12
20	R3W1D4 (312,642sf)	26	EA	\$ 1,641.37	\$ 42,675.62
21	R3W2D1 (275,004sf)	26	EA	\$ 1,565.55	\$ 40,704.30
22	R3W2D2 (254,655sf)	26	EA	\$ 1,428.87	\$ 37,150.62
23	R3W2D3 (278,906sf)	26	EA	\$ 1,564.94	\$ 40,688.44
24	R3W2D4 (296,795sf)	26	EA	\$ 1,689.60	\$ 43,929.60
25	R4W1D1 (306,844sf)	26	EA	\$ 1,721.70	\$ 44,764.20
26	R4W1D2 (342,068sf)	26	EA	\$ 1,947.33	\$ 50,630.58
27	R4W1D3 (336,172sf)	26	EA	\$ 1,886.26	\$ 49,042.76
28	R4W1D4 (266,370sf)	26	EA	\$ 1,494.60	\$ 38,859.60
29	R4W2D1 (255,081sf)	26	EA	\$ 1,431.26	\$ 37,212.76
30	R4W2D2 (358,418sf)	26	EA	\$ 2,040.41	\$ 53,050.66
31	R4W2D3 (284,085sf)	26	EA	\$ 1,594.00	\$ 41,444.00
32	R4W2D4 (324,204sf)	26	EA	\$ 1,819.11	\$ 47,296.86
	Square Foot Adjustment for Additional or Subtracted Inventory			\$0.005611	

**EXHIBIT B  
PRICING**

<b>Routine Turf Maintenance</b>					
41	W1D2 (66,121sf - R3T & R4T)	26	EA	\$ 373.25	\$ 9,704.50
42	W1D3 (14,502sf - R5T)	26	EA	\$ 81.86	\$ 2,128.36
43	W2D2 (219,342sf - R2T)	26	EA	\$ 1,238.19	\$ 32,192.94
44	W2D2 (169,599sf - R2T)	26	EA	\$ 957.39	\$ 24,892.14
Square Foot Adjustment for Additional or Subtracted Inventory				\$0.005645	
<b>Routine Irrigation Maintenance</b>					
45	Monthly Irrigation Controller Inspection and Maintenance (per station)	23,172	EA	\$ 12.64	\$ 292,894.08
<b>Non-Routine Maintenance</b>					
46	Fertilization	597,564	EA	\$ 0.01	\$ 5,975.64
47	Dethatching	597,564	EA	\$ 0.02	\$ 11,951.28
48	Core Aeration	597,564	EA	\$ 0.01	\$ 5,975.64
49	Sod Installation	5000	SF	\$ 0.90	\$ 4,500.00
50	Irrigation Troubleshooting (1 hour min)	500	HR	\$ 45.00	\$ 22,500.00
51	Labor Rate To Install City Provided Parts (1 hour min)	1500	HR	\$ 45.00	\$ 67,500.00
52	Manual Watering (1 hour min)	500	HR	\$ 32.00	\$ 16,000.00
53	Pruning - Groundcover or Shrub	20000	EA	\$ 4.00	\$ 80,000.00
54	Pruning - Ornamental Grass	1000	EA	\$ 5.00	\$ 5,000.00
55	Pruning - Cacti & Succulent Pruning	500	EA	\$ 5.00	\$ 2,500.00
56	Plant Replacement- shrubs & groundcover 5 gallon	1000	EA	\$ 31.00	\$ 31,000.00
57	Plant Replacement- cactus and succulent 15 gallon	250	EA	\$ 80.00	\$ 20,000.00
58	Tree Pruning up to 4" DBH	500	EA	\$ 65.00	\$ 32,500.00
59	Tree Pruning over 4" to 15" DBH	500	EA	\$ 110.00	\$ 55,000.00
60	Remove Tree including stump(Per inch diameter DBH)	500	IN	\$ 50.00	\$ 25,000.00
61	Stump Grinding (Per inch diameter)	500	IN	\$ 11.00	\$ 5,500.00
62	Tree Installation up to 18 Gal	100	EA	\$ 175.00	\$ 17,500.00
63	Tree Installation 24" Box	200	EA	\$ 290.00	\$ 58,000.00
64	Storm or Event Clean-Up (3 hour min)	300	HR	\$ 65.00	\$ 19,500.00
<b>Total Landscape Maintenance Costs</b>					<b>\$ 2,452,633.74</b>

**Unit prices for all items must be expressed using no more than two (2) decimal places.**

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have a 2.00% removed from the taxable item(s) for the purpose of award evaluation (i.25).

DELIVERY: See Mesa Standard Terms and Conditions.

Vendor Name: \_\_\_\_\_

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

RFB 2022224

**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 outlined in this Agreement is intended to create or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
  - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
  - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified

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

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

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 processes.
- 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

reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from the 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 the 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.

- 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 CONSTRAINTS.** The City is a governmental agency that 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 before 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 the 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



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, workmanlike 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.

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 items (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 delay caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts, and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

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

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

policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

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

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

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be 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, supersedes 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. **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.