



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2023110
COMMERCIAL ELECTRICAL CONTRACTOR SERVICES AND ELECTRICAL TESTING 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
E-Mail	Jess.Romney@MesaAZ.gov
Phone	(480) 644-5798

With a copy to: City of Mesa – PRCF
 Attn: Kevin Van-Duyn
 Parks & Community Facilities Maintenance Foreman
 P.O. Box 1466
 Mesa, AZ 85211-1466
Kevin.Van-Duyn@MesaAZ.gov

AND

JFK ELECTRICAL CONTRACTING ENTERPRISES, (“Contractor”)

Mailing Address	1439 W. San Angelo St. Gilbert, AZ 85233
Remit to Address	
Attention	Brandon Krecek Principal
E-Mail	BKrecek@JFKElectric.com
Phone	(480) 688-0988
Fax	(480) 926-3504

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to Solicitation ("Agreement") is entered into this 2nd day of May 2023, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), **JFK Electrical Contracting Enterprises**, 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 **2023110** ("Solicitation") for **Commercial Electrical Contractor Services and Electrical Testing 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 **June 1, 2023** and ending on **May 31, 2026**. 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.

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.

5.4 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. No terms set forth in any invoice, purchase order, or similar document issued by Contractor will be deemed accepted by the City; the terms of the contractual relationship between the Parties are as set forth in this Agreement. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

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

5.5 **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.

5.6 **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.

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

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

CITY OF MESA, ARIZONA

By: _____

Printed Name

Title

Date

REVIEWED BY:

By: 

Jess Romney, NIGP CPP, CPPB
Procurement Supervisor

**JFK ELECTRICAL CONTRACTING
ENTERPRISES**

By: **Brandon Krecek** _____
Digitally signed by Brandon Krecek
DN: C=US, E=bkreck@jkelectric.com,
O="Principle ", OU="JFK Electric, LLC ",
CN="Brandon Krecek "
Date: 2023.04.20 15:10:09-0700'

Brandon Krecek
Printed Name

President
Title

04-20-23
Date

EXHIBIT A
SCOPE OF WORK

1. **SCOPE OF WORK:** Contractor shall provide services to include inspection, testing, preventative maintenance, evaluation, ability to obtain design for permitting, estimates for repair, and repair or replacement of the City of Mesa's Electrical Distribution System Components located at multiple City sites. These systems operate at voltages from 120 volts up to 480 volts and include the following electrical components: switchgear, switchboards, metal enclosed busways, switches, circuit breakers, outlets, lighting, protective relays, grounding systems, motor controllers, motor control centers, and transfer switches. Contractor shall furnish all materials, parts, labor, tools, safety and test equipment to perform the stated services.
 - A. All inspections and tests shall be in accordance with the following applicable codes and standards except as provided otherwise herein.
 - National Electrical Code - NFPA 70
 - National Electrical Manufacturer's Association - NEMA
 - American Society for Testing and Materials - ASTM
 - Institute of Electrical and Electronic Engineers - IEEE
 - American National Standards Institute – ANSI
 - State and local codes and ordinances
 - Insulated Power Cable Engineers Association - IPCEA
 - Association of Edison Illuminating Companies - AEIC
 - OSHA
 - National Fire Protection Association – NFPA 70B
 - National Fire Protection Association - NFPA 70E
 - National Electrical Testing Association - NETA ATS & ANSI/NETA MTS
 - Approved Lockout/Tagout Policy – LOTO
 - B. All inspections and tests shall utilize the following references:
 - Facility design specifications
 - Facility design drawings
 - Manufacturer's instruction manuals applicable to each particular apparatus
 - C. Contractor shall furnish and install replacement parts both minor and major.
 - D. Contractor shall only provide parts meeting the original manufacturer's design and specifications.
 - E. Items shall be available to the Contractor locally and available to the Contractor within the same day that repairs are performed.
 - F. Repair parts shall be new, suitable for their intended uses, and obtained from a recommended or by the original manufacturer of equipment. Equivalent parts may be used only if approved by the City of Mesa.
 - G. No parts or equipment may be removed from the property without written approval from the City of Mesa. This does not include renewal parts stocked on site by Contractor, which shall remain Contractor's sole property until installed on the equipment.
 - H. Contractor shall provide the following Records and Reports:
 1. Scheduled and preventive maintenance program for electrical equipment.
 2. An accurate and complete record of all work performed including the following:
 - The date
 - The time
 - Labor hours
 - Description of the maintenance performed, and actions taken to resolve the complaint

- Date and time work is completed.

All repair work outside routine maintenance may not be started without authorization and must be scheduled with the City of Mesa authorized representative.

Services shall be performed safely in conformance with all provisions of this Agreement, legal statutes, code requirements, applicable OEM specifications, OSHA, NFPA 70E, and City Policies.

Upon completion of the maintenance, tests, and inspections, a label shall be attached to all serviced devices. These labels must indicate the date serviced and the responsible Contractor.

The intent of the electrical preventive maintenance testing is to ensure that all electrical equipment is operational within industry and manufacturer's tolerances and that equipment is installed and functioning in the system in the manner intended, thereby reducing hazards to life and property that can result from failure or malfunction of electrical equipment. The tests and inspections shall be performed in accordance with NETA Acceptance Testing Specifications for Electrical Power Distribution Equipment and Systems and/or ANSI/NETA Maintenance Testing Specifications for Electrical Power Distribution Equipment and Systems and/or NFPA 70B to ensure that equipment and systems are operational and within acceptable standards and manufacturer tolerances and to determine suitability for continued reliable operation. Should problems be identified, Contractor must be able to provide equipment repair services.

2. **DETAILED SPECIFICATIONS:** All work performed under this contract will be coordinated by the Parks, Recreation and Community Facilities Department (PRCF). Except in cases of emergencies, as specified herein, the Contractor shall not begin work on any job until a cost estimate has been submitted and approved by the City's PRCF Director or designee. Any job not authorized by the PRCF Director, or designee will not be honored by the City of Mesa for payment.

Contractor shall furnish qualified journeyman-level electrical services and special repair work from time to time at the City of Mesa's request. The Contractor shall provide their craftsman with the normal tools of the trade and transportation to move between required projects.

The City will obtain multiple bids on jobs estimated at \$25,000 or more through a competitive bidding process. The City reserves the right to quote items estimated at less than \$25,000 if deemed advantageous to the City or to waive the multiple quotes requirement if necessary. Contractor's failure to bid on three (3) or more projects within twelve (12) calendar months may be grounds for removal from this contract. A response is required, even if it is "No Bid."

The work to be performed and the time within which it should normally be completed shall be specified by the City of Mesa. A City of Mesa representative shall furnish the Contractor with such instruction, drawings, and specifications (verbally or in writing), as it deems necessary to accomplish the task required.

The method of performing the work shall be the responsibility of the Contractor after consultation with the City's representative and in accordance with any plans/drawings/specifications for that project.

The Contractor shall furnish experienced journeyman (documented) with the ability to perform all electrical replacements and/or repairs within City facilities related to PRCF Maintenance functions, including but not limited to:

- A. Replacements and repairs of lighting.
- B. Replacements and repairs of Electrical Panels, Switchgear, Power Distribution panels, Generators, and Transfer Switches.
- C. Electrical work relating to repair, remodel/tenant improvements, replacement or preventative maintenance.
- D. Setup and perform preventative maintenance on the Switchgear per specifications along with making proper repairs as needed.

3. **MINIMUM QUALIFICATIONS SWITCHGEAR SERVICE AND SCOPE FOR WORK/TESTING:**

- A. Contractor's (or their sub-contractor's) lead technical person shall have a current valid NETA

level 4 certification and at least five (5) years' experience reviewing and making recommendations for all types of electrical equipment when inspected, tested, maintained, or calibrated.

- B. Contractor's (or their sub-contractor's) technicians shall have a NETA level 2 certification and at least five (5) years' experience in inspection, testing, maintenance, and calibration of all types of electrical equipment. Technicians shall be regularly employed, qualified staff and shall perform all electrical related work safely adhering to the guidelines established in the latest edition of NFPA 70E.
- C. Contractor's (or their sub-contractor's) service personnel shall be skilled electrical journeymen with apprenticeship training and a minimum of five (5) years journeyman experience. Service personnel shall be trained in OSHA requirements 1910.331-335 and NFPA 70E.
- D. Service personnel working on medium voltage equipment shall have a minimum of three (3) years training and experience in the maintenance and repair of medium voltage electrical equipment and shall be regularly employed by the bidder.
- E. Contractor shall have current C-11, A, or A-17 AROC licensing and provide professionally trained technical personnel to perform and complete all services that are specified within.

Visual and Mechanical Inspection shall include the following:

- Clean and vacuum the entire switchgear inside and out.
- Verify tightness of accessible bolted bus connections with a calibrated torque wrench.
- Verify tightness and condition of accessible wire and cable terminations.
- Verify all maintenance devices are available for servicing and operating the breakers.
- Inspect complete breaker including Verify operating mechanism and arc chutes for physical damage.
- Check breaker cell fit and alignment, and operations.
- Vacuum and clean the cell and breaker.
- Inspect moving and stationary contacts for condition and alignment.
- Perform all mechanical operator and contact alignment tests on both the breaker and its operating mechanism in accordance with manufactures instructions.
- Verify racking mechanism operation.
- Verify appropriate lubrication on moving current-carrying parts and on moving sliding surfaces.
- Verify and adjust as needed the protective device settings from the latest owner provided coordination study.
- Document and provide reports for all inspections, findings, acceptance testing, changes or repairs made to breakers or switchgear and recommended preventative maintenance tasks and frequency.

Electrical Test shall include the following:

- Perform an insulation resistance test on the switchgear at 1000 VDC for each bus section, phase to phase, and phase to ground for one minute.
- Measure breakers contact resistance.
- When applicable, check the following breaker functions using primary current injection:
 - Measure long-time pickup and delay.
 - Measure short-time pickup and delay.
 - Measure ground-fault pickup and delay.
 - Measure instantaneous pickup.
- Verify correct breaker operation of any auxiliary features such as trip and pickup indicators, electrical close and trip operation, trip-free, and trip unit battery condition. Reset all trip logs and indicators.
- Perform a breaker insulation resistance test at 1000 VDC from phase to phase and from each phase to ground with breaker closed and across open contacts of each phase.

- Document and provide reports for all inspections, findings, acceptance testing, changes or repairs made to breakers or switchgear and recommended preventative maintenance tasks and frequency.

Contractor's Superintendent shall be present on site at all times when work under this contract is taking place. In case of suspension of the work for any cause, Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project and shall erect any necessary temporary structures, signs, or other facilities at no cost to the City. Unless otherwise approved by the City, once the Contractor starts working on site, work shall continue until all tasks are completed and project is accepted by the City. The Superintendent shall speak, read, and write in English. This person shall not have any additional labor duties other than incidentals. For example, the Superintendent shall not also function as a crew leader or foreman and shall have separate transportation to be able to move independently between jobsites. The Superintendent is permitted to respond to and assist in emergency situations.

Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity, with respect towards all City personnel and property as may be necessary while fulfilling the daily assignments. Contractor shall be responsible for ensuring that all work is performed within the scope of their license(s) and in accordance with the rules and regulations established by the Registrar of Contractors.

Contractor's employees shall be required to wear a clean uniform bearing the Contractor's name. Contractor's employees shall display at all times when performing work for this contract their identification badge issued by the City of Mesa. New employees shall be in uniform and appropriately badged by Municipal Security prior to working on any projects.

Contractor's employees, officers and subcontractors shall not identify themselves as being employees of the City of Mesa. Employees shall conduct themselves in such a manner as to avoid embarrassment to the City and shall be courteous to the public. In the event of difficulty with City employees or the public, the City shall be notified immediately.

The City of Mesa reserves the right to require the Contractor to remove any employee from the work area whom the City of Mesa has deemed incompetent, careless, insubordinate, or whose continued employment on the work site is deemed by City of Mesa to be contrary to the public interest.

Throughout all phases of construction, including suspension of work, Contractor shall keep the site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction activities efficiently, safely and without interfering with the use of adjacent areas. Prior to final acceptance of work, or portion of the work, Contractor shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the work to permit the City to occupy the project or a portion of the project for its intended use.

From time to time the Contractor may be required to move existing furniture in the work area. It will be the Contractor's responsibility to handle this task in a satisfactory manner and return furniture where they were situated prior to the required work.

Contractor shall be responsible for verifying the existence and location of any and all utilities that may be needed or avoided in any phase of the project. The City of Mesa does not guarantee any locations referenced.

The Contractor shall exercise caution at all times for the protection of persons and property. Safety provisions for all applicable laws and ordinances shall be strictly observed. The City of Mesa representative may require the Contractor to discontinue potentially hazardous work practices upon notice.

Contractor shall video record existing conditions and provide a copy to the City. Further, the Contractor is advised that damage caused by the Contractor shall be repaired by Contractor at Contractor's expense. These items include but are not limited to the roof, electrical system, screen walls, sidewalks, pavement landscape and irrigation.

The Contractor may be required to purchase the material necessary to perform routine maintenance and repairs. The Contractor is authorized to purchase such materials and submit merchant receipts for reimbursement within the following guidelines.

- Materials shall be of a grade and quality consistent with the intended use as approved by the PRCF Department.
- Materials/supplies for a specific job may not be reimbursed for amounts over \$500 without the consent of the PRCF Director or designee. (See section 7, Payment)
- The City reserves the right to purchase and furnish the required materials when the net cost exceeds \$100 per job or when the PRCF Director or designee determines it to be in the City's best interest to do so. The City may furnish the Contractor with an inventory of commonly used materials or supplies which are to be used solely for City projects. The Contractor will be accountable for all materials or supplies issued by the City.

Contractor will be responsible for providing transportation to the jobsite and for providing, maintaining, and transporting all related equipment and materials necessary to perform required City of Mesa tasks. The City may require the Contractor, at the hourly rate of the contract and using the minimum number of people necessary, to transport supplies and equipment which are furnished by the City to the jobsite.

The Contractor shall comply with all applicable provisions of the Fair Labor Standards Act as amended and the Arizona Worker's Compensation Law (A.R.S. Title 23 Chapter 6) as amended.

Contractors shall have a City of Mesa privilege license (sales) tax number and State of Arizona Contractor's License in order to be considered for this contract.

The work distribution will be determined by cost analysis and the ability to meet the City of Mesa's timing requirements. It is strictly understood that this is not a contract requirement, and the City reserves the right to procure these services from other sources when deemed necessary or appropriate.

4. **RESPONSE AND REPAIR TIMES:** Below is listed the response and repair times the City would like to have achieved. Describe what your company can reasonably guarantee for response and repair times. If your times differ from what the City would like to achieve, please use the pricing pages so the difference in cost between your response and repairs times and what the City would like achieved.
 - A. All calls for service must be responded to by phone the same day they are made.
 - B. Emergency calls must be acknowledged within thirty (30) minutes, with mobilization to jobsite within ninety (90) minutes.
 - C. Repairs should be completed within twenty-four (24) hours. Repairs requiring more than twenty-four (24) hours should be brought to the attention of the City of Mesa authorized representative.
5. **SUBMITTALS:** No later than fourteen (14) days after testing completion, Contractor shall furnish a total of four (4) copies of test results: two (2) hardcopies and two (2) softcopies (preferably emailed). All four (4) copies shall be delivered directly to the Department representative. The test report shall include the following:
 - Summary of EPM (Electrical Preventive Maintenance) work scope
 - Description of equipment tested
 - Description of test
 - Test results
 - Conclusions and recommendations made and sealed by a registered professional electrical engineer
 - Appendix, including appropriate test forms
 - List if test equipment used and calibration date
 - Recommendations for preventative maintenance tasks and frequency for tested equipment

6. **WORK SCHEDULING:** Occasionally, at the discretion of the City, the Contractor and its employees/subcontractors shall work weekends (call out) holidays and evenings in order not to disrupt normal business hours (Monday through Friday 5 am to 5 pm) and City staff. The specific project specifications shall dictate these requirements.
7. **PAYMENTS:** Payment will be made to the Contractor within thirty (30) days of satisfactory completion of each job request or work order and upon receipt of a properly documented invoice. The Contractor shall submit itemized invoices in duplicate, which shall contain the worker's name, date, job site, number of hours worked, hourly rate and description of work performed. Daily invoices may be required for extended projects. The City is responsible only for time worked on the job site and for any travel time authorized to and from the job site to pick up materials or supplies specifically required to complete work at that job site. The City does not cover expenses for unauthorized travel, including travel to and from the Contractor's office to the job site and back, nor for unauthorized material or supply pickups, or any lunch breaks, etc. The Contractor is expected to exercise reasonable judgment and to make fair, prudent, cost effective and safe work decisions regarding the scope of services to be provided during this contract. Additional invoicing instructions may be set forth by the Contractor Administrator.

The City reserves the right to assess Non-Performance fees on a per job basis that will be outlined in each project bid proposal.
8. **INVOICING:** Payment invoices MUST include all the following information and be issued to the City of Mesa within sixty (60) days of receiving the Letter of Acceptance (LOA) from the project leader:
 - Contract Identification numbers.
 - Flat/Hourly rates and number of hours billed to match total cost.
 - Materials – Contractor shall use percentage discount of manufacture list, the Contractor shall provide list price and discount price on invoice to match contract.
 - All applicable taxes bond and insurance. Total costs of all invoices shall not exceed the total bid amount unless a change order has been approved as an add-on.
9. **MINIMUM QUALIFICATIONS:** Contractor shall provide all necessary qualified personnel, supervision, licenses, tools, transportation and items necessary to provide the indicated services as listed herein.

**EXHIBIT B
PRICING**

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish **Commercial Electrical Contractor Services and Electrical Testing Services** to the City of Mesa at the price(s) stated below.

Commercial Electrical Contractor Services Pricing Sheet

Prices are inclusive of all costs, including but not limited to, direct and indirect costs for labor, tools, insurance, overhead, materials, freight, equipment, travel, mobilization, demobilization. Fuel surcharges will not be permitted. This will establish competitive bid prices for projects under twenty-five thousand dollars (\$25,000.00). Projects over twenty-five thousand dollars (\$25,000.00) will be bid amongst the award Contractors.

Item Number	Group 1 - Hourly Rates	Unit of Measure	Unit Price (Per Each)
1.1	Foreman Labor rates including Truck and Equipment		
a	Straight Time while on-site	Per Hour	\$75.00
b	Weekend, Holiday, After Hours while on-site	Per Hour	\$120.00
1.2	Journeyman Labor rates including Truck and Equipment		
a	Straight Time while on-site	Per Hour	\$65.00
b	Weekend, Holiday, After Hours while on-site	Per Hour	\$104.00
1.3	Project Manager Labor rates including Truck and Equipment		
a	Straight Time while on-site	Per Hour	\$100.00
b	Weekend, Holiday, After Hours while on-site	Per Hour	\$165.00
1.4	Apprentice Labor rates including Truck and Equipment		
a	Straight Time while on-site	Per Hour	\$38.00
b	Weekend, Holiday, After Hours while on-site	Per Hour	\$62.00
		Percentage Markup	
1.5	Percentage Discount Off Manufacturer's List Price on materials *	25%	
	* Proposer should not leave the discount section blank on the pricing sheet. A nominal value should be included anywhere from 0% to 100%. If different discounts would apply depending on the type of product or equipment, type "various" in the space provided and include a list of different discounts offered.		
	<ul style="list-style-type: none"> Parts to be fabricated by contractor shall be quoted before use in repairs for City of Mesa. Contractor shall provide a copy of or access to the Manufacturer's List Price immediately upon request. 		

Switchgear Testing and Service Pricing Sheet

Respondent must utilize the below document when responding to this Solicitation and **return the document in a Excel** format with their response.

When submitting your response online, in the Commodity Lines section, under Commodity Description, enter 0 in that field.

Your completed attached pricing sheet (below) will be used to evaluate your response.

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish Electric Switchgear Testing, Maintenance and Repair Services price(s) stated below.

Group 2 – Inspection and Testing Services			
Provide a quote to do the following work on the equipment listed below, review the scope requirements in the contract to establish pricing. Within a Ten (10) hour de-energized window per site providing all materials, parts, labor, tools, freight, safety and test equipment. The work hours could be either normal business hours; Monday through Friday 5:00 am through 5:00 pm or weekend hours. The Contractor will also be responsible for any power and lighting needs during this time.			
52 East First Avenue: 1/ Square D Type QED 3600 amp, 480/277 Volt, Year of Manufacture 2003 2/ Square D Type QED 3600 Amp, 480/277 Volt, Year of Manufacture 2003			
20 East Main Street: Eaton/Cutler Hammer 2000 amp Pow-R-Line 480/277 Volt Serial # LPX0010558 Eaton/Cutler Hammer 1000 amp Pow-R-Line 208/120 Volt Serial # LPX0010558, Year of Manufacture 2013			
263 North Center: ITE 1600 Amp, 208/120 Volt, Year of Manufacture 1979			
201 North Center: Westinghouse 3000 Amp, 480/277 Volt, Serial # PX72008IT.1, Year of Manufacture 1982			
7550 East Adobe: Seimens 2000 Amp, 480/277 Volt, Serial # 3008084589-020020-02, Year of Manufacture 2020			
120 North Robson: General Electric 1600 Amp, 480/277 Volt, Year of Manufacture 1999			
708 Baseline: Eaton/Cutler Hammer 2000 Amp, 480/277 Volt, Model # SPX0711848, Year of Manufacture 2018			
Sites may be added or removed at the City's discretion based on funding availability and time constraints. Pricing for potential additional site shall be based on the pricing table. These additional sites shall be similar in scope and agreed upon by both the City and Contractor for pricing.			
2.1	Total Inspection and Testing	Normal Business Hours Cost	Weekend Hours Cost
a	52 East First Avenue	10500	15500
b	20 East Main	10500	15500
c	263 North Center	5000	7800
d	201 North Center	5000	7800
e	7550 East Adobe	5000	7800
f	120 North Robson	5000	7800
g	708 Baseline	5000	7800
Group 3 - Equipment, Materials and Parts for the Service Entrance Section (SES)			
3.1	Percentage Discount Off Manufacturer's List Price for Essential Equipment, Materials and Parts.*		
a	Manufacturer	Percentage Off MSRP	
b	ABB	25%	
c	Eaton	25%	
d	General Electric	25%	
e	Siemens/ITE	25%	
f	Square D / Schneider	25%	
g	Westinghouse	25%	
* Proposer should not leave the discount section blank on the pricing sheet. A nominal value should be included anywhere from 0% to 100%. If different discounts would apply depending on the type of product or equipment, type "various" in the space provided and include a list of different discounts offered.			
<ul style="list-style-type: none"> • Parts to be fabricated by contractor shall be quoted before use in repairs for City of Mesa. • Contractor shall provide a copy of or access to the Manufacturer's List Price immediately upon request. 			

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 Brandon Krecek

Date: 02/09/2023
RFP # 2023110

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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

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

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the “Contractor Immigration Warranty”).
 - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
 - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote nondiscrimination. As such, Contractor represents and warrants that it does not discriminate against any person on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender identity, veteran's status, marital status, familial status, or genetic information (collectively, “protected status”) in employment, housing, or facilities, establishments, accommodations, services, commodities, or use offered to or enjoyed by the general public. Contractor further represents and warrants that it does not, on the basis of protected status, refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. In performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws and executive orders regarding non-discrimination including, but not limited to, the following (as amended): Title VII of the U.S. Civil Rights Act of 1964; Section 504 of the Federal Rehabilitation Act; Age Discrimination Act of 1967; Equal Pay Act of 1963; and Americans with Disabilities Act of 1990.
- 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, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.
- g. **Forced Ethnic Uyghur Labor Prohibition.** In accordance with the requirements of A.R.S. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use (i) the forced labor of ethnic Uyghurs in the People’s Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic

of China; or (iii) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

- h. **Termination for Violation of Forced Ethnic Uyghur Labor Prohibition.** If, after providing the certification described in (g), Contractor becomes aware that it is not in compliance with the certification, it shall notify the City within five (5) business days of becoming aware of the noncompliance. Contractor acknowledges that it must remedy the noncompliance and provide written certification of that within 180 days after notifying the City of its noncompliance. If Contractor fails to remedy the noncompliance and provide the written certification within 180 days, the contract shall terminate immediately.

10. **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.

11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.

12.1. 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.

12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.

13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect 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 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;
 - iv. Fails to carry out any term, promise, or condition of the Agreement; or
 - v. Is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal

and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.

- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
 19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
 20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
 21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
 22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
 23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
 24. **INDEMNIFICATION; LIABILITY.**
 - a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services and/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, workman-like, and professional manner. The City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this

Agreement and such loss, injury, or destruction will not release Contractor from any obligation hereunder.

33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City real or personal property when such property is the responsibility of or in the custody of Contractor or its personnel.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided, and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the warranty in section 34, Contractor will without limitation and at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the applicable Purchasing Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will, within five (5) calendar days of the unforeseeable circumstance, notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

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

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members, and its employees are exempt from civil liability for the consequences of adoption and implementation of 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 personal delivery, certified or registered mail with postage prepaid, overnight courier, facsimile, or email. 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, facsimile or email, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated herein.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive, and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract, or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.

47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to 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 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.