

Department Name	ACCOUNT ID	Description	FY23 Budget Sub-lines	FY23 Final Budget	FY24 Final Sub-lines	FY24 Final Budget
Water	511-5-7115-221	PIPES, FITTINGS & REPAIRS		\$50,000		\$50,000
Water	511-5-7115-222	CHEMICALS		\$45,000		\$60,000
Water	511-5-7115-225	ASPHALT/COAL MATERIAL		\$6,000		\$8,000
Water	511-5-7115-226	FIRE HYDRANTS/PARTS		\$30,000		\$30,000
Water	511-5-7115-230	OFFICE SUPPLIES		\$1,500		\$1,500
Water	511-5-7115-232	COMPUTER/PRINTER SUPPLIES		\$500		\$500
Water	511-5-7115-233	UNIFORMS		\$3,500		\$4,500
Water	511-5-7115-237	EQUIPMENT/FURNITURE PURCHASE		\$1,500		\$1,500
Water	511-5-7115-249	OPERATING MATERIAL & SUPPLIES		\$1,000		\$1,000
Water	511-5-7115-250	BUILDING MAINTENANCE/REPAIRS		\$7,500		\$7,500
Water	511-5-7115-251	COMPUTER/PRINTER MAINTENANCE		\$500		\$500
Water	511-5-7115-253	VEHICLE MAINTENANCE/REPAIRS		\$40,000		\$40,000
Water	511-5-7115-255	WELL SITE MAINTENANCE/REPAIRS		\$181,000		\$181,000
Water	511-5-7115-269	OTHER MAINTENANCE/REPAIRS		\$2,500		\$2,500
Water	511-5-7115-311	PROFESSIONAL SERVICES		\$18,500		\$25,000
Water	511-5-7115-313	CONTRACTED SERVICES		\$112,500		\$130,000
Water	511-5-7115-314	LIABILITY INSURANCE		\$253,000		\$278,500
Water	511-5-7115-325	TECH/SOFTWARE SUPPORT		\$32,000		\$37,000
Water	511-5-7115-326	LICENSE AND PERMITS		\$12,000		\$12,000
Water	511-5-7115-328	EQUIPMENT RENT/LEASES		\$7,000		\$7,000
Water	511-5-7115-333	SAMPLING/TESTING		\$35,000		\$40,000
Water	511-5-7115-350	TRAVEL AND PER DIEM		\$1,000		\$1,000
Water	511-5-7115-351	CONFERENCE, SEMINARS & TRAINING		\$10,500		\$15,500
Water	511-5-7115-360	PRINTING COST		\$500		\$500
Water	511-5-7115-362	MAILING COST		\$500		\$500
Water	511-5-7115-370	DUES-MEMBERSHIPS-FEES		\$8,000		\$8,000
Water	511-5-7115-370	AZ 811 Blue Stake	\$1,692		\$1,692	
Water	511-5-7115-370	AZ Water Association	\$65		\$65	
Water	511-5-7115-370	American Water Association	\$242		\$242	
Water	511-5-7115-370	West Valley Water Association	\$3,200		\$3,200	
Water	511-5-7115-370	AZ STORM	\$750		\$750	
Water	511-5-7115-370	Water Use IT Wisely	\$2,000		\$2,000	
Water	511-5-7115-370	Misc. Adjustment	\$51		\$51	
Water	511-5-7115-381	WIRELESS COMMUNICATIONS		\$9,500		\$9,500
Water	511-5-7115-383	TRASH SERVICE		\$500		\$500
Water	511-5-7115-385	BUILDING WATER/SEWER SERVICES		\$3,000		\$3,000
Water	511-5-7115-385	Sewer	\$600		\$600	
Water	511-5-7115-385	Water	\$2,400		\$2,400	
Water	511-5-7115-386	LANDSCAPING/IRRIGATION		\$12,000		\$12,000
Water	511-5-7115-386	At wells	\$12,000		\$12,000	
Water	511-5-7115-387	UTILITY ELECTRICITY		\$409,000		\$934,000
Water	511-5-7115-418	SPECIAL PROJECTS		\$273,500		\$283,000
Water	511-5-7115-418	Consultant for Lead and Copper Pipes	\$0		\$50,000	
Water	511-5-7115-418	Dietz Crane Arsenic Media Replacment	\$0		\$100,000	
Water	511-5-7115-418	GIS Mapping	\$133,000		\$133,000	
Water	511-5-7115-418	Computer and Monitor Refresh	\$5,500		\$0	
Water	511-5-7115-418	ADWR Water Conservation Education	\$135,000		\$0	
Water	511-5-7115-482	ASSURED WATER SUPPLY		\$1,740,000		\$1,763,000
Water	511-5-7115-617	CAPITAL EQUIPMENT PURCHASE		\$40,000		\$0
Water	511-5-7115-617	Vacuum Excavator Trailer	\$0		\$0	
Water	511-5-7115-617	Well Transducer Upgrade	\$0		\$0	
Water	511-5-7115-617	Disinfection System Upgrade	\$0		\$0	
Water	511-5-7115-617	62077 - Well Transducer Upgrade	\$40,000		\$0	
Water	511-5-7115-650	VEHICLES		\$48,500		\$50,000
Water	511-5-7115-650	Vehicle Replacement Program - Water	\$48,500		\$50,000	
Water	511-5-7115-656	BUILDING/DATA INFRAS. IMPROV.		\$1,138,500		\$2,228,500
Water	511-5-7115-656	62343 Public Works Facility Carryforward	\$0		\$55,000	
Water	511-5-7115-656	Water Production Facility Rehabilitation Program	\$300,000		\$140,000	
Water	511-5-7115-656	Well Site AC Unit Replacement	\$0		\$0	
Water	511-5-7115-656	62065 - Water Production Facility Rehabilitation Program	\$0		\$400,000	
Water	511-5-7115-656	Customer Service Facility	\$704,000		\$300,000	
Water	511-5-7115-656	Public Works Facility	\$134,500		\$1,333,500	
Water	511-5-7115-658	LAND IMPROVEMENTS		\$67,000		\$0
Water	511-5-7115-658	62212- Drainage Improv. Dysart & Peoria	\$37,000		\$0	
Water	511-5-7115-658	Drainage Improvements at Dysart Road & Peoria Avenue	\$0		\$0	
Water	511-5-7115-658	Well Site Security Improvement Project	\$30,000		\$0	
Water	511-5-7115-670	SEWER COLLECTION SYSTEM		\$0		\$0
Water	511-5-7115-673	PRE-CONSTRUCTION DESIGN		\$260,000		\$1,675,000
Water	511-5-7115-673	Booster Pump Replacement for 127th Lane Well Site	\$0		\$100,000	
Water	511-5-7115-673	Sunnyvale Well Site Discharge Pipe Replacement and Flow Meter	\$0		\$65,000	
Water	511-5-7115-673	Water Main Replacement	\$0		\$1,250,000	

Department Name	ACCOUNT ID	Description	FY23 Budget Sub-lines	FY23 Final Budget	FY24 Final Sub-lines	FY24 Final Budget
Water	511-5-7115-673	Critical Valve Replacement Program	\$200,000		\$200,000	
Water	511-5-7115-673	62111- West Downtown Water Main	\$0		\$0	
Water	511-5-7115-673	62069- 127th Lane Well Site	\$0		\$0	
Water	511-5-7115-673	62106- 12" DIP Line Dysart & Northern	\$0		\$0	
Water	511-5-7115-673	62059- Drainage Improvements	\$60,000		\$60,000	
Water	511-5-7115-717	WIFA - PRINCIPAL		\$1,477,000		\$1,549,000
Water	511-5-7115-730	COST OF ISSUANCE		\$0		\$0
Water	511-5-7115-731	DEFERRED AMOUNT OF REFUNDING		\$0		\$0
Water	511-5-7115-750	WIFA - INTEREST		\$310,500		\$278,500
Water	511-5-7115-773	TRUST/AGENCY FEES		\$10,000		\$10,000
Water	511-5-7115-923	FUTURE DEBT SERVICE		\$0		\$0
Water	511-5-7115-950	TRANSFER OUT		\$3,116,000		\$3,116,000
Water	511-5-7115-950	Misc. Adjustment	\$0		\$0	
Water	511-5-7115-950	General Fund	\$1,722,000		\$1,722,000	
Water	511-5-7115-950	Sewer Fund	\$1,394,000		\$1,394,000	
Water	511-5-7115-960	DEPRECIATION		\$1,600,000		\$1,650,000
Water	511-5-7116-110	SALARIES AND WAGES		\$311,000		\$354,000
Water	511-5-7116-111	OVERTIME		\$2,500		\$3,000
Water	511-5-7116-120	HEALTH-LIFE-DENTAL INSURANCE		\$85,000		\$71,000
Water	511-5-7116-130	SOCIAL SECURITY CONTRIBUTION		\$20,000		\$23,000
Water	511-5-7116-131	MEDICARE CONTRIBUTION		\$5,000		\$6,000
Water	511-5-7116-132	ASRS CONTRIBUTION		\$39,000		\$40,000
Water	511-5-7116-140	WORKERS COMPENSATION		\$1,000		\$1,000
Water	511-5-7116-141	UNEMPLOYMENT INSURANCE		\$2,000		\$2,000
Water	511-5-7116-230	OFFICE SUPPLIES		\$2,500		\$3,000
Water	511-5-7116-232	COMPUTER/PRINTER SUPPLIES		\$3,000		\$3,000
Water	511-5-7116-233	UNIFORMS		\$500		\$500
Water	511-5-7116-237	EQUIPMENT/FURNITURE PURCHASE		\$1,000		\$1,000
Water	511-5-7116-248	SOFTWARE PURCHASE		\$500		\$500
Water	511-5-7116-249	OPERATING MATERIAL & SUPPLIES		\$1,000		\$1,000
Water	511-5-7116-269	OTHER MAINTENANCE/REPAIRS		\$3,000		\$3,000
Water	511-5-7116-313	CONTRACTED SERVICES		\$97,000		\$97,000
Water	511-5-7116-325	TECH/SOFTWARE SUPPORT		\$40,000		\$40,000
Water	511-5-7116-338	ARMORED CAR SERVICES		\$7,500		\$7,500
Water	511-5-7116-350	TRAVEL AND PER DIEM		\$3,000		\$3,000
Water	511-5-7116-351	CONFERENCE, SEMINARS & TRAINING		\$3,500		\$3,500
Water	511-5-7116-360	PRINTING COST		\$3,000		\$3,000
Water	511-5-7116-362	MAILING COST		\$2,000		\$2,000
Water	511-5-7116-363	MAILING COST-UTILITY BILLING		\$53,500		\$54,500
Water	511-5-7116-370	DUES-MEMBERSHIPS-FEES		\$500		\$500
Water	511-5-7116-370	AZ Water Association	\$160		\$160	
Water	511-5-7116-370	Misc. Adjustment	\$340		\$340	
Water	511-5-7116-372	BANK CHARGES/MERCHANT SERVICES		\$125,000		\$137,000
Water	511-5-7116-373	BANK CHARGES/LOCKBOX		\$15,000		\$15,000
Water	511-5-7116-381	WIRELESS COMMUNICATIONS		\$1,500		\$1,500
Water	511-5-7116-418	SPECIAL PROJECTS		\$8,000		\$0
Water	511-5-7116-418	Computer and Monitor Refresh	\$8,000		\$0	
Irrigation	516-4-1141-612	IRRIGATION		\$30,000		\$35,000
Irrigation	516-5-7122-199	LABOR DISTRIBUTION		\$12,000		\$12,500
Irrigation	516-5-7122-387	UTILITY ELECTRICITY		\$5,000		\$5,000
Irrigation	516-5-7122-482	ASSURED WATER SUPPLY		\$115,000		\$116,000
Wastewater	541-4-1141-711	SEWER SERVICE CHARGES		\$3,290,000		\$3,305,000
Wastewater	541-4-2611-511	INTEREST REVENUE		\$5,000		\$120,000
Wastewater	541-4-9999-971	TRANSFER IN		\$1,394,000		\$1,394,000
Wastewater	541-5-7581-110	SALARIES AND WAGES		\$519,000		\$531,000
Wastewater	541-5-7581-111	OVERTIME		\$3,000		\$3,000
Wastewater	541-5-7581-116	ON CALL PAY		\$10,000		\$10,000
Wastewater	541-5-7581-120	HEALTH-LIFE-DENTAL INSURANCE		\$114,000		\$126,000
Wastewater	541-5-7581-130	SOCIAL SECURITY CONTRIBUTION		\$33,000		\$34,000
Wastewater	541-5-7581-131	MEDICARE CONTRIBUTION		\$8,000		\$8,000
Wastewater	541-5-7581-132	ASRS CONTRIBUTION		\$66,000		\$68,000
Wastewater	541-5-7581-140	WORKERS COMPENSATION		\$22,000		\$17,000
Wastewater	541-5-7581-141	UNEMPLOYMENT INSURANCE		\$3,000		\$3,000
Wastewater	541-5-7581-199	LABOR DISTRIBUTION		-\$15,000		-\$16,000
Wastewater	541-5-7581-210	SMALL TOOLS/EQUIP/PARTS		\$2,000		\$2,000
Wastewater	541-5-7581-211	FUEL AND LUBRICANTS		\$5,500		\$5,500
Wastewater	541-5-7581-213	SAFETY EQUIPMENT/SUPPLIES		\$7,000		\$7,000
Wastewater	541-5-7581-222	CHEMICALS		\$140,000		\$205,000
Wastewater	541-5-7581-230	OFFICE SUPPLIES		\$1,500		\$1,500
Wastewater	541-5-7581-232	COMPUTER/PRINTER SUPPLIES		\$2,000		\$2,000
Wastewater	541-5-7581-233	UNIFORMS		\$2,000		\$2,000
Wastewater	541-5-7581-249	OPERATING MATERIAL & SUPPLIES		\$500		\$500
Wastewater	541-5-7581-250	BUILDING MAINTENANCE/REPAIRS		\$10,000		\$10,000
Wastewater	541-5-7581-253	VEHICLE MAINTENANCE/REPAIRS		\$4,000		\$4,000
Wastewater	541-5-7581-254	COPIER USAGE/SUPPLIES/MAINT		\$1,000		\$1,000
Wastewater	541-5-7581-256	WWTP MAINTENANCE/REPAIRS		\$150,000		\$150,000



**AGREEMENT PURSUANT TO SOLICITATION**

**CITY OF MESA AGREEMENT 2020135  
WATER, WASTERWATER TREATMENT AND POOL CHEMICALS**

**CITY OF MESA, Arizona (“City”)**

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 450 Mesa, AZ 85201
Attention	Ted Stallings, CPPB Procurement Officer II
E-Mail	<a href="mailto:Ted.Stallings@MesaAZ.gov">Ted.Stallings@MesaAZ.gov</a>
Telephone	(480) 644-2815

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

**AND**

**HILL BROTHERS CHEMICAL, (“Contractor”)**

Mailing Address	21639 N. 12 <sup>th</sup> Ave., Suite 100 Phoenix, AZ 85207
Remit to Address	1675 N. Main Street Orange, CA 92867
Attention	Rusty Mosher/Michael Zaragoza
E-Mail	<a href="mailto:rusty@hillbrothers.com">rusty@hillbrothers.com</a> / <a href="mailto:MZ@hillbrothers.com">MZ@hillbrothers.com</a>
Telephone	602-315-3881 / 602-315-9363

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 15<sup>th</sup> day of June, 2020, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Hill Brothers Chemical, an AZ company ("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 **2020135** ("Solicitation") for **WATER, WASTERWATER TREATMENT AND POOL CHEMICALS**, 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, 2020** and ending on **June 30, 2023**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
  - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

3. **Orders.** Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement
4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
  - a. Agreement
  - b. Exhibits
    1. Mesa Standard Terms & Conditions
    2. Scope of Work
    3. Other Exhibits not listed above
  - c. Solicitation including any addenda
  - d. Contractor Response

5. **Payment.**

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

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

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

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

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

During the sixty (60) to ninety (90) day period prior to Contract annual anniversary date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1,

pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

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

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

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

## 6. **Insurance.**

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

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

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under

the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

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

8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
  - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
  - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
  - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Scope of Work / Technical Specifications
  - (B) Pricing
  - (C) Mesa Standard Terms and Conditions
  - (D) Other
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

## 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: Hill Brothers Chemical

Signature: 

Printed Name: Michael Zaragoza

Title: Area Product Specialist

Date: May 1<sup>st</sup>, 2020

## City Acceptance of Offer

### 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 **2020135**.

Awarded this 15<sup>th</sup> day of June 2020.

---

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

REVIEWED BY:

By: *Ted Stallings*  
Ted Stallings, CPPB  
Procurement Officer II

**EXHIBIT A  
SCOPE OF WORK**

1. **SCOPE OF WORK:** The purchase and delivery of Water, Wastewater Treatment and Pool Chemicals as per the specifications.
  
2. **TAX EXEMPT:**
  - a. Many of the chemical purchases are exempt from transaction privilege taxes. Liquid, solid, or gaseous chemicals used in manufacturing or process operations are exempt from transaction privilege taxes if:
    - i. the chemical involves direct contact with materials for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process; or
    - ii. the chemical is used directly to meet Federal or State rules and regulations to prevent, monitor, control or reduce land, water or air pollution.
  - b. Products that are exempt (for City of Mesa). It is the responsibility of the awarded contractor(s) to ensure invoices have the appropriate tax designation per chemical and delivery site. Arizona Form 5000 (Transaction Privilege Tax Exemption Certificate) is available upon request.
  
3. **PURCHASE QUANTITIES:** The Contract will be a unit price contract for an indefinite amount of Products and Services to be furnished at specified times, or as ordered. In some cases, indefinite quantity contracts may state a minimum quantity that the City is obligated to order. The City may make available to Suppliers information regarding the City's purchase history or projected estimates of the approximate quantity of Products that will be needed. The City makes no representations as to the accuracy of such information. Each Supplier is required to perform its own due diligence on which to base its bid. Inaccuracy of purchase history or projected quantity estimates provided by the City will not give rise to any claim against the City, or entitle any Supplier to rescind its bid or terminate or amend the Contract.
  
4. **PRODUCT DELIVERY:**
  - a. No fuel surcharges will be accepted.
  - b. FOB is Destination, Freight Prepaid and Allowed.
  - c. Shipments shall be made in appropriate transport vehicle for product type that does not degrade the products in on/off loading or transport.
  - d. Delivery:
    - i. Water Resources Department:
      1. Unless otherwise indicated in specifications or at time of order, deliveries shall be made **Monday through Thursday** between 7:30 am and 2:00 pm (arrival time of delivery must permit completion of offload and transport vehicle off site no later than 3:00 pm).
      2. Deliveries will not be accepted on Fridays, weekends or City holidays.
    - ii. Parks, Recreation, and Community Facilities Department:
      1. Unless otherwise indicated in specifications or at time of order, deliveries shall be made **Monday through Friday** between 7:30 am and 1:00 pm (arrival time of delivery must permit completion of offload and transport vehicle off site no later than 1:00 pm).
      2. Deliveries will not be accepted on weekends or City holidays.
    - iii. City Warehouse: Deliveries shall be made Monday through Thursday between 7:00 and 3:00 pm.
  - e. The City reserves the right to refuse delivery if product cannot be off loaded as per the specifications contained in this RFP.
  - f. The City shall not be invoiced for deliveries that arrive too late to offload product.
  - g. Contractors are responsible for ensuring delivery instructions for each product and delivery location are conveyed to the driver for each delivery. Unless otherwise

**EXHIBIT A  
SCOPE OF WORK**

indicated in specification or at time of order, general driver instructions are:

- i. Notify the City contact indicated for the delivery of the estimated arrival time at least sixty (60) minutes prior to arrival.
  - ii. Check in at delivery site main office (when applicable) upon arrival.
  - iii. Offload will not commence until met by the delivery location contact or designee.
  - iv. Be equipped with the proper personal protective equipment appropriate for the product delivered (apron, goggles, face shield, gloves, etc.), and spill kits if required for use during off-loading.
  - v. Provide required documentation for the product at time of deliver.
  - vi. Bill of Lading (documentation to include volume/weight).
  - vii. Certificate of Analysis (must include percent solution).
  - viii. Safety Data-Sheet.
- h. Failure to follow delivery instructions may result in refusal of delivery.

**5. PRODUCT RECALL:**

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

**6. INVOICING:**

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

**7. PRICING:**

- a. Unit Cost/Pricing are all inclusive of product, services, delivery, fuel, travel/mileage, per diem, vehicles, labor/employees, insurance, supplies, equipment, etc.

**EXHIBIT B  
PRICING**

**PRIMARY AWARD**

Item #	Description / Delivery Location	Estimated Annual Usage	Order UOM	Manufacturer	Product ID	Tax Except Yes/No	Pricing is to be based on Order UOM					Delivery ARO can be Met as per specifications? Y/N	Invoice UOM	Formula for converting Order UOM to Invoice UOM
							Unit Price	Total Price	FTL Minimum Order Quantity	Unit Price for Less than Truck Load (LTL) Order	LTL Minimum Order Quantity (if any)			
9	Chlorine 99.5%, Liquid (95# and 150# Cylinders)													
	A 95 lb Cylinder	530	cylinder	Occidental	CC16000K0	Yes	53.2	\$ 28,196.00				Y	LB	\$52.20/95=.56
	B 150 lb Cylinder	884	cylinder	Occidental	CC16000T0	Yes and No*	84	\$ 74,256.00				y	LB	\$84/150=.56
14	Hydrochloric Acid, Liquid 31%-35%													
	B 300 Gallon Tote Delivery	8	tote	Reagent	CM15000Z0	No	495	\$ 3,960.00				y	LB	(\$495/300)/9.67=.1706
	C 500 lbs Drum	6	drum	Reagent	CM15000L0	No	95.95	\$ 569.70				y	lb	\$96.95/500=.1899
32	Sodium Bisulfite, 38-40%, NaHSO3													
	B LTL	1,600	gallon	Brenntag	CS05400G0	Yes	2.28	\$ 3,648.00			300			
37	Sodium Hypochlorite, 12.5% NaOCl (Bleach)													
	A Bulk Delivery	795,800	gallon			Yes	0.779	\$ 619,928.20	4200	\$ 1.10	200	y	Gallon	
	B 13 Gallon	468	bucket			No	29.25	\$ 13,689.00					Gallon	\$29.25/13=2.25
	C 6 Gallon	20	container			No	24	\$ 480.00					Gallon	\$24/6=4.00
	D 300 Gallon Tote Delivery	3	tote			No	465	\$ 1,395.00					Gallon	\$450/300=1.50

Item #	Description / Delivery Location	Container/Cylinder Deposits and Fees					
		Container Deposit, if any, (refunded)	# of days free use	Charge per day after free use	Lost Cylinder Charge	Cylinder considered lost after how long?	Valve damage beyond repair
9	Chlorine 99.5%, Liquid (95# and 150#)						
	A 95 lb Cylinder	\$ 150.00	365			365	\$250.00
	B 150 lb Cylinder	\$ 150.00	365			365	\$250.00
14	Hydrochloric Acid, Liquid 31%-35%						
	B 300 Gallon Tote Delivery	\$ 300.00	180			180	\$400.00
	C 500 lbs Drum	\$ 40.00	180			180	\$ 40.00
37	Sodium						
	B 13 Gallon	\$ 20.00	180 day		\$ 20.00	180 Days	
	C 6 Gallon	\$ 10.00	180 day		\$ 10.00	180 Days	
	D 300 Gallon Tote Delivery	\$ 400.00	1 Year		\$400.00	1 year	

**SECONDARY AWARD**

Item #	Description / Delivery Location	Estimated Annual Usage	Order UOM	Manufacturer	Product ID	Tax Except Yes/No	Pricing is to be based on Order UOM					Delivery ARO can be Met as per specifications? Y/N	Invoice UOM	Formula for converting Order UOM to Invoice UOM
							Unit Price	Total Price	FTL Minimum Order Quantity	Unit Price for Less than Truck Load (LTL) Order	LTL Minimum Order Quantity (if any)			
14	Hydrochloric Acid, Liquid 31%-35%													
	A Bulk	24,000	Bulk	Reagent	CM15000M0	No	1.25	\$ 30,000.00	4500	\$ 1.30	300	Y	Gallon	

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

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

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the "Contractor Immigration Warranty").
  - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
  - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
  - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction with a value of \$100,000 or more, then, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of goods and services from Israel.
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

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
- b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
14. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any 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:

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
    - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
    - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
    - iv. Fails to carry out any term, promise, or condition of the Agreement.
  - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
  - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
  - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
  - b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
  - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
  - 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.

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION; LIABILITY.**
  - a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
  - b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or 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

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

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

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

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.

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

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

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a **part of this Agreement as if fully stated herein.**
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** By entering into this Agreement, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.
49. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City’s and/or any customer’s credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.



**CONTRACT AMENDMENT**

**Contract Title:** Water, Wastewater Treatment and Pool Chemicals

**Contractor:** Hill Brothers Chemical

**Contract Number:** 2020135

**Amendment Number:** 6

**Description of Change:**

1. Section 1, Term of the Agreement is hereby amended to renew the Agreement for a one (1) year period, July 1, 2023, through June 30, 2024.
2. Price Change.

Description	Unit Price	New Pricing	Percentage Decrease	Unit
Bleach				
Bulk	\$1.9916	\$1.9616	-1.51%	Per Gallon
13 Gallon	\$45.01	\$44.62	-1.06%	Per Gallon
6 Gallon	\$31.27	\$31.09	-0.58%	Per Gallon
300 Gallon Tote	\$813.87	\$804.87	-1.11%	Per Gallon

3. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect.

**Effective Date of Change:** July 1, 2023

**Acceptance:** On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and except that as amended herein, all provisions of the Contract remain in full force and effect.

**Hill Brothers Chemical:**

*Michael Zaragoza*  
\_\_\_\_\_  
Signature

Michael Zaragoza  
\_\_\_\_\_  
Printed Name

06/19/23  
\_\_\_\_\_  
Date

**City of Mesa:**

*Edward Quedens*  
\_\_\_\_\_  
Signature

Edward Quedens  
\_\_\_\_\_  
City Manager Designee

6/29/23 11:50 MST  
\_\_\_\_\_  
Date

**CONTRACT AMENDMENT**

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Reviewed by:

*Ted Stallings*

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Ted Stallings,  
Procurement Officer II