

Water Production Facility Rehabilitation Program

Project Number: 62065
 Total Capital Cost: \$1,600,000.00

Department: Water
 Type: Capital Improvement
 Request Groups: CIP
 Timeline: 07/01/2023 to 06/30/2024

Request description:

This project is to rehab, repair or replace the equipment needed to deliver water to the residents of El Mirage and a portion of Surprise residents. This maintenance program will prolong the useful life of the water production facilities.

Water supply, supply of pressure, and water storage tanks operate successfully with little maintenance for extended multi-year periods. However, gradual failure, including corrosion or loss of curb appeal, can result in water infrastructure requiring upgrades. Therefore, a rehabilitation program is designed to ensure asset preservation, process water quality improvements, and maintain operator safety. The city has a total of 10 water production facilities within the water distribution system.

The 2021 National Community Survey found that 46% of El Mirage residents rank the quality of drinking water favorably, compared to 69% who rank the overall quality of the utility infrastructure favorably, and 91% of residents feel it is important to focus on utility infrastructure in the next two years.

Modified - Increase FY25 and FY26 to \$800K. Remove FY27 and FY28.

Capital Costs	FY2025	FY2026	Total
Planning			\$0.00
Design			\$0.00
Engineering			\$0.00
Repairs/Improvements	\$800,000.00	\$800,000.00	\$1,600,000.00
Construction/Maintenance			\$0.00
Furniture and Fixtures			\$0.00
Other			\$0.00
Total	\$800,000.00	\$800,000.00	\$1,600,000.00

Funding Source	FY2025	FY2026	Total
111 - General			\$0.00
114 - Court			\$0.00
121 - Court Enhancement			\$0.00
128 - Towing			\$0.00
131 - HURF			\$0.00
141 - LTAF			\$0.00
148 - CDBG			\$0.00
156 - Capital Streets			\$0.00
511 - Water	\$800,000.00	\$800,000.00	\$1,600,000.00
516 - Ranchettes			\$0.00
541 - Sewer			\$0.00
591 - Sanitation			\$0.00
149 - Special Projects			\$0.00
Total	\$800,000.00	\$800,000.00	\$1,600,000.00

Additional Information

Type of Project: Refurbishment
 Strategic Priority: Superior Infrastructure
 Division: Utilities
 Grant Funding: No
 Bond Eligible: No
 Project Status: Modified

**CIP 62065 Water Production Facility Rehabilitation Project
FY25 Summary**

Item	Cost
Rockwood Booster 1 VFD	\$ 8,363.00
Rockwood Booster 2 VFD	\$ 8,363.00
Alto Booster 1 VFD	\$ 8,363.00
Alto Booster 2 VFD	\$ 8,363.00
<hr/> Project Total	<hr/> <u>\$ 33,452.00</u>

November 4, 2024

Kyle Huttenhow
10355 N 121st Ave
El Mirage, AZ 85335
623-876-4251
khuttenhow@elmirageaz.gov

RE: Rockwood 1 Booster

Proposal: 237359.00

Mr Huttenhow:

In accordance with your request and supporting information, Keller Electrical Industries (KEI) proposes the following scope and budget for completing this work.

Scope of Work

- Provide and install (1) Toshiba VFAS3-4450PC, rated 106A Normal Duty VFD.
- This includes terminations, start-up, and commissioning.

1 Engineering

- a. KEI engineering evaluated existing and spec'd out Toshiba VFAS3-4450PC.

2 Permitting, Construction, and Demolition

- a. No permitting identified in this scope of work.

3 Spare Parts

- a. Cost for spare parts is not included in this proposal.
- b. Upon request, KEI will furnish a priced list of recommended spare parts.

4 Schedule

- a. TBD

5 Exclusions and Clarifications

- a. Only work, equipment, and materials explicitly stated in this document are part of this proposal. KEI accepts the responsibility for the coordination and furnishing of small and incidental equipment and services normally associated with this type of work and for coordination with other disciplines. Any additional significant equipment, materials, or services will be furnished only upon execution of a change order.
- b. All other equipment and services not specifically mentioned in this scope of work nor defined above shall be the responsibility of others.
- c. This proposal is based upon KEI executing their work in reasonable coordination with other disciplines and entities. Additional KEI costs due to significant or extraordinary delays by others will be grounds for change orders.
- d. For orders where KEI only manufacturers or supplies equipment for installation and startup by others, KEI reserves the right to withhold shipment until full payment is received.

- e. KEI reserves the right to withhold shipment of equipment and materials until payment has been received for all outstanding invoices.
- f. KEI will not supply personnel for startup or commissioning until payment has been received for all outstanding invoices.
- g. A bid bond is not included in this proposal but KEI will provide one for additional cost.

6 Exceptions to the Bid Documents

- a. Due to continual fluctuation in the commodities market, this proposal is valid for (30) days from the date issue.
- b. After (30) days, KEI reserve the right to evaluate current pricing and adjust this offering, if applicable accordingly

7 Taxes and Freight

- a. We have identified the scope of work to be performed under this proposal as maintenance, repair, replacement, or alteration (“MRR”) activities, in accordance with Arizona Revised Statutes (A.R.S) Section 42-5075. As a result, transaction privilege taxes are the responsibility of KEI.
- b. Unless noted differently, this proposal includes freight cost for delivery of KEI manufactured products to the project site.
- c. Unless noted differently, freight cost for equipment shipped FOB manufacturer’s facility or FOB port-of-entry is not included in this proposal.

8 Warranty

- a. The warranty period for KEI manufactured electrical and control equipment is 18 months from ship date or 12 months from startup date. During this period, KEI will repair or replace at no cost to owner any failed component or system.
- b. Unless noted differently, KEI will honor a manufacturer’s warranty for all purchased equipment and will coordinate with the manufacturer to repair or replace the equipment in accordance with the manufacturer’s warranty.
- c. The KEI warranty covers only KEI furnished equipment and explicitly excludes all costs of lost production, loss of facility availability, and any and all other incidental costs.
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9 Price Tabulation

Project Total **\$8,363**

10 Payment Terms and Conditions

- a. KEI will submit invoice on receipt of PO for 35% of scope of work.
- b. KEI will submit invoice upon completion of Scope of Work.
- c. Net 30 terms apply.

Description	Percentage
Upon Receipt of Order	35%
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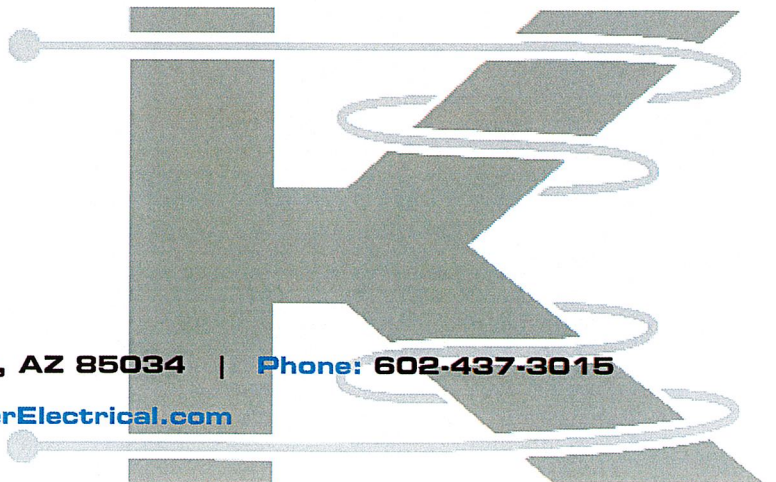
KEI appreciates the opportunity to furnish this proposal. We have made every effort to assure that the proposed equipment and services will satisfy your requirements. Should you have any questions, comments, concerns or require further clarification, please feel free to contact me at your convenience.

Ralph Dougherty

Project Manager
Keller Electrical Industries, Inc.
1881 E. University Dr.
Phoenix, AZ 85034
O: (602) 437-2675
F: (602) 437-8163
C: (602) 321-6044
Email: Ralph.dougherty@otcindustrial.com

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November 4, 2024

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10355 N 121st Ave
El Mirage, AZ 85335
623-876-4251
khuttenhow@elmirageaz.gov

RE: Rockwood 2 Booster

Proposal: 237642.00

Mr Huttenhow:

In accordance with your request and supporting information, Keller Electrical Industries (KEI) proposes the following scope and budget for completing this work.

Scope of Work

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Proposal: 237362.00

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AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2020112
MOTOR, PUMP, WELL REPAIR AND REPLACEMENT 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	Ted Stallings, Procurement Officer II
E-Mail	Ted.Stallings@MesaAZ.gov
Telephone	(480) 644-2815
Facsimile	(480) 644-2655

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

AND

KELLER ELECTRICAL INDUSTRIES, INC., (“Contractor”)

Mailing Address	1881 E. University Drive Phoenix, AZ 85034
Remit to Address	1881 E. University Drive Phoenix, AZ 85034
Attention	Dwight Groth
E-Mail	dgroth@kellerelectrical.com
Telephone	602-437-3015

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 1st day of July, 2020, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Keller Electrical Industries, Inc, an AZ Corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2020112** ("Solicitation") for **MOTOR, PUMP, WELL REPAIR AND REPLACEMENT SERVICES**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

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

TERMS & CONDITIONS

1. **Term.** This Agreement is for a term beginning on **July 2, 2020** and ending only **July 1, 2025**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Extension for Procurement Processes.** Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work.** The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

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

5. **Payment.**

- 5.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("Pricing") in consideration of Contractor's performance of the Scope of Work during the Term.
- 5.2 **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and include all costs of the Contractor providing the materials/service including transportation, insurance and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

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

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

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

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

- 5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the

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

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

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes
- j. 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:
- o (A) Scope of Work
 - o (B) Pricing
 - o (C) Mesa Standard Terms and Conditions
 - o (D) Other
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

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

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

CITY OF MESA, ARIZONA

Digitally signed by Edward Quedens
DN: cn=Edward Quedens, o=City of
Mesa, ou=Business Services
Department,
email=ed.quedens@mesaaz.gov, c=US
Location: City of Mesa
Date: 2020.07.02 08:43:20 -07'00'
Adobe Acrobat version:
2020.009.20067

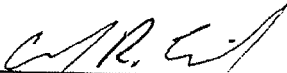
By: 

Printed Name _____

Title _____

Date _____

KELLER ELECTRICAL INDUSTRIES, INC.

By: 

Cody R. Estick
Printed Name _____

Senior Vice President
Title _____

6/24/2020
Date _____

REVIEWED BY:

By: Ted Stallings
Ted Stallings, CPPB
Procurement Officer II

EXHIBIT A
SCOPE OF WORK

1. **SCOPE OF WORK:** To provide repair services, parts and new equipment as needed for the Water Resources Department and the Parks, Recreations and Commercial Facilities Department. **No brand substitutions will be accepted on items marked as OEM only.**
 - a. This is not an “all or nothing” proposal as no single firm can supply everything required. Contractors can bid on any number of items. Awards will be made per item and there may be multiple awards per item.
 - b. There are three (3) categories of items listed in this RFP. Contractors are encouraged to propose on all Categories if they can provide the equipment and/or services. There will be multiple awards per category and Contractors do not have to bid on all items in a category to receive an award.
 - i. **Motors:** The services shall include but are not limited to pulling and repairing/rewinding various types of motors, replacing motors, providing new motors, installation services, vibration analysis, onsite meggar testing, alignment services dynamic balancing and other related services.
2. **ECONOMY OF PROPOSAL:** Proposals should be prepared simply and economically, providing straightforward and concise description of the Proposer’s capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representation beyond that is sufficient to present a complete and effective proposal are neither required nor desired.
3. **CONTRACTOR REQUIREMENTS.**
 - a. Contractor shall have a service facility fully equipped to repair and fabricate parts as required for the size and type of equipment proposed. The City reserves the right to make at least one (1) annual on-site inspection of such Contractor facilities (within twenty-four (24) hours minimum notice) at its discretion.
 - b. Contractors bidding on Motors and Submersible Pumps with closely coupled motors have the following requirements:
 - i. Contractor service facilities must be equipped with personnel and equipment necessary to perform electromechanical repairs/rewinding to electric motors per the established guidelines in EASA AR100—2006, Recommended Practice for the Repair of Rotating Electrical Apparatus.
 - ii. Contractor shall be certified to repair pumps and motors approved for classified locations (explosion proof motors).
 - iii. Contractor shall provide personnel trained and properly equipped for confined space entry.
4. **CONTRACTOR PERFORMANCE EXPECTATIONS.**
 - a. All materials and workmanship provided to the City shall be of the highest industry standard shall at a minimum meet the original manufacturers specifications and AWWA Standard A100-6 for Water Wells and AWWA Standard E103-07 for Horizontal and vertical line shaft pumps. Materials purchased by the City through this contract shall be new and subject to inspection and approval by a City representative prior to delivery.
 - b. If required, the Contractor shall obtain all permits and licenses and pay all taxes, charges and fees necessary to perform the services.
 - c. Contractor shall guarantee all work under this contract against defects of materials and/or workmanship for a period of one (1) year from the completion date. Chemical agents used shall be warranted for the labeled time period and shall not exceed the shelf time, if applicable.
 - d. The Contractor shall furnish all necessary supplies, labor, vehicles and equipment to perform services. All supplies, labor, vehicles and equipment shall be compliant with the specifications, terms and provisions set forth herein and shall be subject to random, unannounced inspection by an individual designated by the City.

**EXHIBIT A
SCOPE OF WORK**

- e. The Contractor must make repairs in a timely manner to minimize downtime at the City of Mesa facilities, including plants and lift stations.

5. CONTRACTOR RESPONSIBILITIES.

- a. Contractor shall provide all necessary equipment, tools, personal protection equipment and personnel with technical expertise necessary to provide the requested services. Repeated and documented instances of using substandard materials, supplies, and/or personnel, or failure to provide services in a timely manner, shall constitute grounds for termination of contract.
- b. The Contractor shall be responsible for all equipment that is damaged while in their possession.
- c. The Contractor shall properly guard, protect, and take every reasonable precaution necessary against damage or injury to all finished or partially finished work due to weathering action by the elements or from any other cause, until the entire portion of their respective contract obligation is completed and accepted by the City of Mesa. The Contractor(s) shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work before final acceptance at no cost to the City of Mesa. Partial payment for any completed portion of work shall not release the Contractor(s) from such responsibility.
- d. The Contractor shall comply with all applicable federal, state, and local safety and health regulations, ordinances, and requirements. The Contractor shall comply with Occupational Safety and Health Administration regulations specified in 29 CFR 1910.147 The Control of Hazardous Energy (Lockout/Tagout).
- e. Precaution shall be exercised by the Contractor(s) at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State Occupational Safety and Health Acts, and Standards and Regulations promulgated thereunder.
- f. The Contractor shall implement a permit-required confined space program as specified under 29 CFR 1910.146 for all work that encompasses a space that:
 - i. is large enough and so configured that an employee can bodily enter and perform assigned work;
 - ii. has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and
 - iii. is not designed for continuous employee occupancy.
- g. The Contractor shall be fully responsible for the safety of their employees, the public and property in connection with the performance of the work covered by this contract. The Contractor(s) shall provide all safeguards, safety devices and protective equipment and be responsible for taking any needed actions to protect the life and health of their employees and the public during work activity. The Contractor(s) shall also take any necessary actions as directed by the Water Resources Department Supervisor or designee to reasonably protect the life and health of employees on this job and others coming into contact with the job site.
 - i. The Contractor shall provide, upon request, a copy of its written health and safety program and any required employee training records or certificates.

6. RESPONSE TIME:

- a. Contractor shall commence work within five (5) calendar days of notification from City for all non-emergency calls/repairs.
- b. Contractor shall commence work within twenty-four (24) hours of notification from City for all emergency calls/repairs.

**EXHIBIT A
SCOPE OF WORK**

7. **WORK ESTIMATES AND COMPLETION TIMES:**

- a. Prior to the Contractor performing any repair work, the Contractor shall be required to provide the CITY with a written report/estimate that includes the condition of equipment, recommended repairs, costs of repairs vs cost of replacement, and the estimated time needed to complete the repairs.
 - i. Based on the cost of the repairs, number of days required for the repairs, and other factors as deemed important to the City of Mesa, it may be deemed that it is more advantageous to replace the pump/motor rather than repair it. For this reason, no work shall commence until the City provides a Notice to Proceed with the work as outlined in the estimate.
 - ii. If a Contractor provides an estimate, but the City does not provide a Notice to Proceed with the repair work, that Contractor shall be allowed to invoice the City for the tear down and the estimate. The City may request that the disassembled equipment be returned and in this case freight charges will be borne by the City. No additional costs will be charged to the City.
 - iii. The City reserves the right halt repair services at any time during the repair process. If repair services have already commenced, the Contractor shall be allowed to invoice the City for any repair services that have already been performed. Contractor shall be required to submit documentation to show the work that has already been performed. Upon termination of the repair job, all pumps/motors and parts will be returned to the City.
- b. The Contractor will be allowed to remove and disassemble the equipment prior to providing the City with a written report/estimate. The written estimate will be required within seventy-two (72) hours after the equipment was removed from the site or delivered to the repair facility by the City.
- c. The Contractor shall be required to repair and reinstall (if required) the equipment within ten (10) working days from approval of the work estimate. This requirement will be adjusted if parts delivery exceeds the ten (10) days.
- d. Estimate shall include the following information: Facility and Location Name, Pump/Motor Unit Name/ ID, Sizes, # of bowls, HP, and any other applicable information along with a detailed estimate that is to include total man hours and type with cost, materials with manufacturer information and part numbers, estimated completion date, Inspectors name and Main Point of Contacts information, and digital photos of defective parts.
- e. Contractor shall provide a weekly update (on a mutually agreed upon form) of repair status along with digital photos throughout the repair process. The Contractor's facility shall be available to inspect the units repair work and progress. Progress information shall be provided to the City via e-mail to the Requestor.

8. **REMOVAL, PICK-UP AND DELIVERY**

- a. Contractor shall be responsible for dismantling, removal, pick-up, reinstallation, and delivery of all pumps/motors when and where requested by the City (with the exception of those delivered to shop by City personnel). The contractor shall have sufficient vehicle/trailer capacity to transport well pipe, pumps and any other related equipment.
- b. Pick-up and delivery shall be F.O.B. Destination Freight Prepaid to and from various locations.
- c. Contractor shall return completed repair items to the City within an agreed upon time frame from date of authorization to proceed, or department approval of estimate/quote.

9. **KEY PERSONNEL**

- a. The Contractor shall have competent personnel trained in the repair of the proposed equipment and must have the equipment/supplies necessary to perform repairs on the equipment as per the specifications, terms and conditions of this contract.

**EXHIBIT A
SCOPE OF WORK**

10. **REPAIRS:**

- a. The Contractor is required to provide a pricing estimate for all repairs prior to the City authorizing the repair. Once the repairs have been authorized and completed, the Contractor shall invoice the City using a complete breakdown of parts and labor that matches the rates and mark-ups bid on the pricing pages. The Invoice shall list the Contractor cost of each part along with the % markup and finally the City cost of each part. The Contractor shall include the Supplier Invoices for all parts or equipment upon request by the City.
 - i. Example: ABC Seal Contractor Cost \$53.00 +Mark-up @ 12% (\$6.36) = City Cost \$59.36.
- b. The Contractor shall use manufacturer recommended replacement parts only unless specifically authorized by the City requester. Non-OEM parts shall be called out on quote and invoice.

11. **FIELD SERVICES:**

- a. Contractor's crew must be capable of communicating with the Contractor's main office without leaving the job site, i.e. two-way radio, cell phone, etc.
- b. Contractor shall have access to various sizes of vehicles with sufficient lift capacity to pick up and deliver pumps and/or motors weighing up to two (2) tons (4000 pounds) or up to 500 HP.

12. **VIBRATION ANALYSIS (PUMPS AND MOTORS):**

- a. Repairs performed under this contract will be subject to vibration analysis and must comply with manufacturers specifications.

13. **SAFETY PROCEDURES:**

- a. Contractor will be responsible for coordinating their activities with City. Prior to the start of work, Contractor and City should perform a Pre-job briefing to discuss and plan for dealing with relevant safety issues such as lockout tag-out and confined space exposures. Contractor will be responsible to properly lockout tag-out electrical hazards and ensure there is a plan to deal with other work-related hazards.

14. **DISINFECTION (POTABLE WATER EQUIPMENT):**

- a. Contractor will be responsible for disinfection of all potable water equipment with NSF approved products prior to and during installation in accordance with Maricopa County Health Code, Chapter V, Water Supply R9-8-266.

15. **CLEANUP:**

- a. Contractor shall remove all debris and other materials from the work site after the completion of work.

16. **PROTECTION OF FINISHED AND PARTIALLY FINISHED WORK:**

- a. Contractor shall properly secure the work site and protect all finished or partially finished work.

17. **DISPOSAL OF WASTE:**

- a. Contractor will be responsible for disposal of all waste products including but not limited to oil baled from a well, debris, etc. at a legal off-site location. ANY DISPOSAL OF WASTE

**EXHIBIT A
SCOPE OF WORK**

PRODUCTS OR UNUSED MATERIALS SHALL CONFORM TO APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS. Copies of disposal documentation shall be provided to CITY upon request.

18. **INSTALLATION**

- a. All newly painted surfaces shall be protected from damages. If damages occur Contractor shall repair surfaces as recommended by manufacturer and to the satisfaction of the City.
- b. Line shafts and Motor shall be aligned according to manufacturer and/or City recommendations.
- c. Piping strain issues encountered during installation will be brought to the attention of the City.
- d. Well equipment shall be disinfected in accordance with ANSI/AWWA C651-14 prior to installation.

19. **START-UP, DEMONSTRATION, AND TESTING**

- a. City will be responsible for termination of power and control wires. Once completed a rotation check shall be done by Contractor in coordination of City personnel, after which Contractor shall couple the pump and motor.
- b. Once rotation check and coupling has been performed a Start-up of the pump/motor shall be performed in coordination with the City, at which time a Vibration Analysis and/or Pump Efficiency test will be performed.
- c. All tests performed by Contractor shall be witnessed and approved by the City before acceptance, No Exception.
- d. All tests performed should fall within acceptable ranges for Pump Efficiency and/or Vibration Analysis of the manufacturer unless otherwise determined by City.

20. **WRITTEN COMPLETION REPORTS:**

- a. Contractor shall submit a written completion report to City within thirty (30) days of completion of work, which details work completed. The report for pump repair shall include depth of setting, bowl size and make, tube and shaft size and make, depth of well water level and other pertinent information. The report shall include a daily log that accounts for all hours and materials billed to the job. All reports must be received and verified prior to Contractor invoicing for the work. If the invoice is dated before the reports were received and verified, the City will deny the invoice and ask that a new invoice be created with an invoice date AFTER the reports were received and verified.

21. **ORDERS AND INVOICING:**

- a. **Order Placement:**
 - i. Orders shall be placed using a Delivery Order (DO) #. There shall be no minimum purchase required. The contracted vendor shall deliver available products within seven (7) to ten (10) business days from order placement to City user sites.
 - ii. Equipment and parts shall be new, un-opened, and in original factory packaging and in current manufacturer production at time of bid opening.
 - iii. All equipment, parts and supplies to be boxed and/or packaged in such a manner to adequately protect the equipment against physical damage during shipment and to insure carrier acceptance and safe delivery at the designated destination.
- b. **Packing Slips:**
 - i. Packing Slips should be itemized and reference City contract number and delivery order number (DO).
 - ii. Any parts or supplies received with defects shall immediately be replaced at no charge by the Contractor.
- c. **Invoicing:**

**EXHIBIT A
SCOPE OF WORK**

- i. Invoices shall be emailed to WaterAcctsPayable@MesaAZ.gov for the fastest processing.
- ii. Invoices shall include the following: Delivery order (DO) #, part number(s), product description, list price, percent discount, city cost (contract pricing), freight charge and sales tax (if applicable as many items to be purchased off of this contract will be tax exempt).
- iii. Vendors shall not invoice for items not shipped as this will delay payment of entire invoice.
- iv. Vendors shall not invoice for disinfection services performed unless the invoice is accompanied by the report and test results as indicated in this RFP.

22. **WARRANTY:**

- a. Product - The City is requesting a warranty on all new equipment and parts for a minimum of one (1) year (unless stated otherwise in this solicitation) from the date of receipt.
- b. Equipment Repair Service – The City is requesting a warranty on all equipment repair services for a minimum of ninety (90) days from the date of completion.
- c. In the event of any of the aforesaid warranties are not fulfilled, Contractor guarantees to promptly reimburse the City for its cost in making suitable repairs or replacements or, at the City's option, the Contractor shall promptly make suitable repairs or replacements at Contractor's own expense. Contractor shall submit with bid response detailed information regarding product warranty.

23. **PURCHASES/REPLACEMENTS:**

- a. The City may decide to purchase replacement pumps, motors, and other equipment from Contractor. The price to be paid to Contractor by City will be billed at the Contractor's invoice price (from supplier invoice) multiplied by the compensation factor listed on the pricing page. The factor listed will be Contractor's compensation for handling. There will be no mark-up on freight costs. Freight shall be handled as a pass-through cost. Contractor shall include invoices for any parts/equipment for which he is seeking compensation. The Invoice shall list the Contractor cost of each part along with the % markup and finally the City cost of each part. Contractor shall provide their supplier invoice upon request to the City.
- b. City reserves the right to purchase motors, and other equipment directly from the manufacturer or from other vendors if it is in City's best interest.

24. **PRODUCT RECALL:**

- a. In the event of any recall notice, technical service bulletin, or other important notification affecting the equipment, parts and services purchased under this agreement, a notice shall be sent to the Contract Administrator. It shall be the responsibility of the Contractor to assure that all recall notices are sent directly to the Contract Administrator and Purchasing Office.
- b. Contractor assumes full responsibility for prompt notification of both the contract administrator and purchases of any product recall in accordance with the applicable State of Arizona and federal regulation.

**EXHIBIT B
PRICING**

MOTORS

A NEW MOTOR SALES			
1	<p>All motors shall be at vendor cost + % markup for their handling and shall include motor cost and any incidentals. Shipping (freight) shall not be marked-up but handled simply as a pass-through cost. Vendor must be prepared to prove vendor cost by supplying their supplier invoice when requested.</p>	15%	% Mark-up

C SHOP SERVICES		Rate for Service Weekday		Rate for Service Overtime, Weekend, Holiday	
1	Shop Labor	\$ 65.00	PER HOUR	\$ 97.50	PER HOUR
2	Shop Machinist	\$ 75.00	PER HOUR	\$ 112.50	PER HOUR
3	Shop Welder	\$ 65.00	PER HOUR	\$ 97.50	PER HOUR
4	Shop Infrared Camera / Thermal Images	\$ 65.00	PER HOUR	\$ 97.50	PER HOUR
5	Shop Dynamic Balancing Service	\$ 65.00	PER HOUR	\$ 97.50	PER HOUR
6	Shop Laser Shaft Alignment	\$ 75.00	PER HOUR	\$ 112.50	PER HOUR

D CRANE SERVICES			
Crane/Crew Rental. Pricing shall include all labor material, overhead, fuel surcharges and taxes to perform the services as outlined in the solicitation.			
Crane Size Up to 5 ton			
1	Operator Charge	\$ 140.00	Per Hour
2	Delivery & Pick-Up Charge	\$ -	Per Job
3	Each Additional Crew Person	\$ 65.00	Per Hour
All other Crane Sizes - subcontracted			
4	Cost + Markup	15%	% Markup over vendor cost

E FIELD SERVICES					
Pricing shall include all labor material, overhead, fuel surcharges and taxes to perform the services as outlined in the solicitation.					
	Crew Size	Weekdays - Travel to & from job location within City from Contractor's yard		Overtime, Weekends, Holidays - Travel to & from job location within City from Contractor's yard	
1	Three (3) Man Crew	\$ 150.00	Per Job	\$ 225.00	Per Job
2	Two (2) Man Crew	\$ 125.00	Per Job	\$ 187.50	Per Job
3	One (1) Man Crew	\$ 75.00	Per Job	\$ 112.50	Per Job
4	Standby charge after 30 minumtes	\$ 75.00	Per man / per hour	\$ 112.50	Per man / per hour
5	Field Welder	\$ 75.00	Per Hour	\$ 112.50	Per Hour
6	Field Tech or Field Electrician	\$ 75.00	Per Hour	\$ 112.50	Per Hour
7	Field Vibration Analysis Service	\$ 75.00	Per Hour	\$ 112.50	Per Hour
8	Onsite Balancing Service	\$ 75.00	Per Hour	\$ 112.50	Per Hour
9	Onsite Meggar Testing Service	\$ 75.00	Per Hour	\$ 112.50	Per Hour
10	Onsite Alignment Services	\$ 75.00	Per Hour	\$ 112.50	Per Hour

**EXHIBIT B
PRICING**

F	Incidentals and Repair Parts		
	Percent markup over cost for repair parts purchased by the Contractor:	12%	Cost + %

**Do not leave blank, enter
0% - 100%**

G	Value Added Services		
	Attach a list of any value added services your company has to offer along with the price for each service. If accepted by the City, these could become part of the awarded contract.		

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.

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

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reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.

16. **DEFAULT.**

- a. A party will be in default of the Agreement if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

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

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

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- d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22 (Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION; LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or

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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.

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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

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employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

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

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

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit, in law or equity, arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, 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.

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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.