



**AGREEMENT PURSUANT TO SOLICITATION  
CITY OF MESA AGREEMENT NUMBER 2023058  
LIBRARY DIGITAL MEDIA**

**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	Evan Karl, NIGP-CPP, CPPB Procurement Officer I
E-Mail	<a href="mailto:Evan.Karl@MesaAZ.gov">Evan.Karl@MesaAZ.gov</a>
Phone	(480) 644-2356

With a copy to: City of Mesa – Library Services  
Attn: Jesse Simms, Assistant Library Director  
P.O. Box 1466  
Mesa, AZ 85211-1466  
[Jesse.Simms@MesaAZ.gov](mailto:Jesse.Simms@MesaAZ.gov)

**AND**

**OVERDRIVE, INC., (“Contractor”)**

Mailing Address	One OverDrive Way Cleveland, OH 44125
Remit to Address	PO Box 72117 Cleveland, OH 44192
Attention	Stephanie Everett, Account Manager
E-Mail	<a href="mailto:severett@overdrive.com">severett@overdrive.com</a>
Phone	216-573-6886
Fax	216-573-6888

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to Solicitation ("Agreement") is entered into this 27<sup>th</sup> day of February 2023, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and OverDrive, Inc., a Delaware 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 **2023058** ("Solicitation") for **LIBRARY DIGITAL MEDIA**, 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 **March 1, 2023** and ending on **February 28, 2026**. The use of the word "**Term**" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
  - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
2. **Scope of Work**. The Contractor will provide the necessary staff, services, and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

3. **Orders**. Orders are placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.
- a. Agreement
  - b. Exhibits
    1. Mesa Standard Terms & Conditions
    2. Scope of Work
    3. Other Exhibits not listed above
  - c. Solicitation including any addenda
  - d. Contractor Response

5. **Payment.**

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

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

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

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

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

During the sixty (60) day period before the 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. If applicable, mileage or travel costs; and
- k. Total amount due.

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

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

## 6. **Insurance**.

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

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

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.


- 6.4 Each insurance policy required under the Agreement must be in effect at or before the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Before the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
  - 6.9.2 Automobile liability, bodily injury, and property damage with a limit of \$1 million per occurrence including owned, hired, and non-owned autos.
7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after the receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth in the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
  - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;

- c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
  - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Scope of Work / 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.

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

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

**CITY OF MESA, ARIZONA**


By:  Edward Quedens  
cn=Edward Quedens, o=City of Mesa, ou=Business Services  
Director / City of Mesa,  
email=ed.quedens@mesaaz.gov, c=US  
2023.02.28 13:24:10 -07'00'

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**OVERDRIVE, INC.**

By:  Erica Lazzaro  
DocuSigned by:  
5DF276BA627A480...

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Executive Vice President & General Counsel  
Title

\_\_\_\_\_  
2-21-23  
Date

REVIEWED BY:

By:  Evan Karl 2/21/2023  
\_\_\_\_\_  
Evan Karl, NIGP-CPP, CPPB  
Procurement Officer I



## Tab 3 – Program Description and Method of Approach

### Required Services

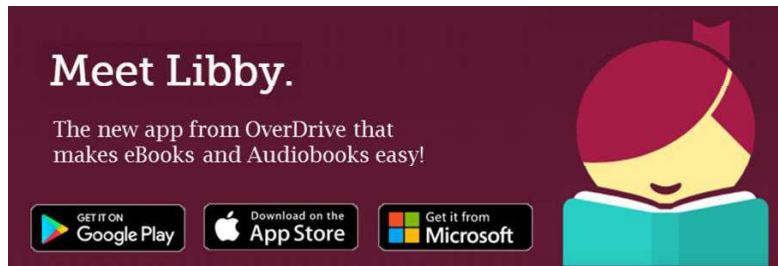
#### Ease Of Use

##### *Availability of Access Models*

All users will access the service using your chosen authentication protocol. OverDrive supports Google, LDAP (including Active Directory), SAML (Azure AD, Okta, etc.), and other authentication methods.

##### *Mobile Application*

Libby is the award-winning app used by thousands of libraries around the world, enabling users to access and enjoy ebooks, audiobooks, magazines, and comics anytime.



PC Magazine's The Best Free Software of 2019

“ The library is often-overlooked public resource (and some are modernizing quickly), but OverDrive brings it back into the fold with the newly redesigned, Libby.



The 20 Best Apps of the 2010s

“ Listen up, the library is cool and we all secretly know it. But what's even cooler is that the OverDrive-created and owned Libby app lets you borrow e-books, audiobooks, music, and more for free.



Time Magazine's Best iPhone and Android Apps of 2018

“ Put your local library in your pocket with Libby, an ebook- and audiobook-borrowing app with a wealth of literary offerings available on demand.

Library patrons can access content via any web browser by going to [www.libbyapp.com](http://www.libbyapp.com), or by downloading the app on iOS 10+ or Android 5.0+. OverDrive digital content is compatible in accordance with the following chart:



Device	ebooks	audiobooks	magazines	videos	Libby app
Kindle ereaders (all models, including Kindle, Paperwhite, Oasis)	✓				
Kindle Fire tablets (FireOS 5+)	✓	✓	✓	✓	
Windows computers (Windows 7)	✓	✓	✓	✓	use libbyapp.com in browser
Windows computers and tablets (Windows 8+)	✓	✓	✓	✓	use libbyapp.com in browser
Windows computers and tablets (Windows 10+)	✓	✓	✓	✓	use libbyapp.com in browser
Mac computers (Mac OS 10.6+)	✓	✓	✓	✓	use libbyapp.com in browser
Chromebooks (Chrome OS 41+)	✓	✓	✓		✓
Android phones and tablets (v5.0+)	✓	✓	✓	✓	✓
iOS v10+ (iPhones, iPads, iPod touches)	✓	✓	✓	✓	✓
iOS v12+ (iPhones, iPads, iPod touches)	✓	✓	✓	✓	✓
iPod (all versions)		✓			
NOOK tablets (all models currently available: NOOK 10" HD, NOOK Tablet 10.1")	✓	✓	✓	✓	✓
NOOK ereaders (all models currently available: GlowLight 3, GlowLight Plus)	✓				
Kobo ereaders (all models currently available: Sage, Libra 2, Elipsa, Forma, Libra H2O, Clara HD, Nia)	✓				
Adobe-compatible ereaders (for example, PocketBook and Tolino ereaders)	✓				
MP3 players (for example, SanDisk and Sony Walkman MP3 players)		✓			

### *Platform Agnostic*

Libby is compatible with iOS 10.0 and newer, Android 5 and newer, Fire OS 5 and newer, and any popular web browser released since 2015 including Chrome, Firefox, Safari, and Edge.

### *Software*

No additional software is required for Libby.

### *Limits of Usage*

There are no limits to the number of users. Any checkout or hold limitations per user are set by the library.

### *Additional Registration*

There are no additional registration requirements for patrons outside of library card authentication.

## Multilingual Navigation

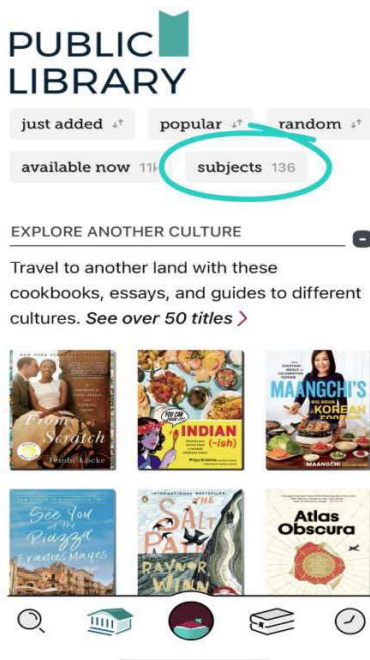
Libby is available in the following languages: Chinese (Simplified), Chinese (Traditional), French, German, Italian, Japanese, Russian, Spanish, and Swedish. Additionally, OverDrive offers digital content in over 100 languages.

## Interface

Once a user has downloaded Libby, they simply follow the prompts to find their library and sign in with a library card to begin searching the catalog and borrowing books. To see all the library's subjects, tap the library building icon in the footer:



Then, tap **subjects** at the top of the screen. From there, tap a subject to browse its titles. Users can also tap **sort** to display them alphabetically or by number of titles (most to least).



To sort or filter search results or a specific list, users can:

- Tap the **books**, **audiobooks**, or **magazines** link at the top of a list to only show titles in that format.
- Tap **Refine**, then:
  - Tap **Format**, **Subject**, **Language**, **Audience**, **Supports**, or **Availability** to add filters.
  - Tap **Sort By** to choose another sort option.
  - Tap **Search Within Results** and enter a search term.



Libby is designed to be intuitive and easily customizable for users. There are a wide range of features, search capabilities, and functionalities to help users enjoy their digital reading experience. Additionally, help is always available at [help.libbyapp.com](http://help.libbyapp.com).

### *User Experience*

Libby is easily customized by tapping **Settings** under the **Help & Support** option within the app. Here, readers can retrieve a setup code to install Libby on another device, seamlessly syncing content. Readers can also customize the following:

- Accessibility Features: Adjust the way Libby looks and acts to suit your needs. This includes:
  - Reduce color variation
  - Reduce text variation
  - Reduce motion
  - Reduce vibrations
  - Orientation locking
  - Keyboard shortcuts
- Read Books With...: Set your preferred default ebook reader (Kindle or Libby).
- Manage Notifications: Choose which types of events you'd like to be notified about, selecting from the following options: ignore, menu badge, and notification. Events include: loan expiring, loan expired, hold ready, hold lapsing, hold lapsed, notify me (author), and notify me (series).
- Change Download Rules: Select which loans are downloaded automatically from the following options: everything, titles under 20MB, or nothing. Users can also set the app to download only on Wi-Fi to reduce mobile data usage.
- Customize Navigation: Customize the buttons that navigate between areas of the app. Options include the Now Bar and the Navigation Bar.
- Choose Your Language: select the language that you prefer Libby to use.

### *Accessibility Features*

OverDrive is dedicated to creating “a world enlightened by reading” for *all* readers. OverDrive’s mission is to provide services that are accessible and to provide an inclusive and user-friendly experience to every end user, every time.

The Web Content Accessibility Guidelines (WCAG) define requirements for designers and developers to improve accessibility for people with disabilities. With the goal of sustained accessibility in mind, all OverDrive apps are in the process of being updated to conform with the applicable WCAG 2.1 Level AA Success Criteria to the greatest extent possible. Though our goal is full compliance with all WCAG 2.1 Level AA Success Criteria, due to the nature of our service, certain limitations may exist. Known limitations include: Certain ebook content may not permit text-to-speech functionality and audiobook content will not permit speech-to-text functionality due to licensing restrictions from most supplying publishers.

OverDrive's library websites are compatible with native screen readers on desktop and mobile devices. This includes compatibility with most accessibility programs and apps, such as Android Accessibility Suite, VoiceOver for iOS, Narrator for Windows, JAWS, and NVDA. In addition



to these screen reading capabilities, OverDrive's services offer the following accessible product features (this list also includes our accessibility features for Sora, the app for our K-12 education partners):

- High contrast option on the library website and in Sora
- Native OS Dark Mode supported in Libby for devices operating Android 10+ or iOS 13+
- OpenDyslexic font option on the library website, as well built-in support via OverDrive Read for Libby and Sora
- Native OS text sizes supported in Libby for both iOS and Android devices
- Ebook font size options in the OverDrive app, Sora, Libby, and at the library website
- Many ebooks in PDF and EPUB format, plus MP3 audiobooks, to provide a greater level of accessibility with assistive technology
- Alternative text within the OverDrive app, Sora, and at the library website
- Native screen reader compatibility in the OverDrive app for Android, iOS and Windows 8/10
- Tab key navigation within Sora and on the library website
- Keyboard shortcuts in OverDrive with OverDrive for Windows (desktop) and OverDrive for Windows 8/10
- Enhanced screen reader support in Sora, including labeled elements, dynamic communications, and multi-language capabilities
- ARIA labels providing additional contextual information are available within the OverDrive app, Sora, and at the library website
- Keyboard shortcuts in Libby's ebook reader and audiobook player

Additional accessibility features will be introduced in both Sora and Libby.

## Administrative Features

### *Promotional Materials*

As an existing library partner, Mesa Public Library has a customized website, complete with a logo and custom colors. We also provide social media graphics for your use, as well as any customized marketing material that you might need. All marketing materials are free of charge. Additionally, the OverDrive Resource Center has a wide range of free resources to print, distribute, or share digitally. These include "Getting Started with Libby Guide", bookmarks, flyers, and a range of customizable graphics and templates.

### *Training Materials*

Training is included at no cost, and can be provided both virtually and on site, in person. Training is available on-demand in the OverDrive Resource Center (<https://resources.overdrive.com/>) which include brief how-to videos, tutorials, and in-depth webinars. Training is provided by OverDrive's professional staff training team. In-person training can be provided on topics related to Libby, administrative purchasing and tools in Marketplace, and other topics of interest.



Most partners complete 2-4 hours of live, interactive training. OverDrive can add more refresher or deeper-dive learning opportunities as needed. These can be live or self-paced learning sessions through how-to videos and/or eLearning modules. Additionally, as mentioned above, all OverDrive partners have a dedicated Product Support Specialist assigned to their account, available directly via email or phone. There is also an Account Manager assigned to each account who is available by email or phone.

### *Technical Support*

OverDrive provides every partner with several points of contact to ensure a high-quality level of service, including a day-to-day account contact (Account Specialist), a day-to-day technical contact (Product Support Specialist), and a day-to-day collection development support specialist (Digital Content Librarian). This team works with every partner to ensure that they have a high-quality digital collection that will circulate among its customers, as well as provide technical support for library staff to make sure all customers are able to understand and use the platform. OverDrive responds to all support inquiries within one (1) business day and strives to resolve all issues raised as quick as commercially possible.

OverDrive applies a proven and rigorous approach to the handling and resolution of complaints. All complaints are logged internally on a ticketing system to ensure that the full details are captured. The tickets raised are evaluated to determine if their resolution will require new development and improvement of the system. Tickets are also reviewed to determine if clarifications need to be added to the OverDrive Help pages and documentation. Once the necessary action is determined, the complainant and affected customers are informed of the remedial action being taken and the likely timeline involved.

OverDrive also sends customer satisfaction surveys following support tickets, and sends customer satisfaction questionnaires when new products are released as well as at other intervals to monitor customer satisfaction. OverDrive carefully monitors customer feedback, and allows customers to make development requests to ensure that the product offers the features that customers are seeking, and that those features work as expected.

### *Usage Statistics*

OverDrive offers 24/7/365 reporting capabilities within the OverDrive Marketplace. OverDrive Marketplace offers numerous tools for staff and content selectors to utilize to ensure success of the digital collection. No personal information is published by OverDrive. If a user creates an OverDrive Account, the user will need to provide a name and email address. If a user places a hold on a title, they may provide their email address for notification of when the title becomes available for checkout. OverDrive does not collect or access any personal information unless the user chooses to submit to OverDrive. For more information, please see the OverDrive Privacy Policy (<http://company.overdrive.com/privacy-policy/>).

Using the available tools in the OverDrive Marketplace, the library can run reports on the following items:

- *Merchandising Management*: View all saved featured lists, used in Marketplace merchandizing. As needed, rename, edit or delete lists.
- *Collection Usage Reports*:



- *Current Waiting List*: View titles your users have on hold.
- *Circulation Activity*: View One Copy/One User, Metered Access, and/or Simultaneous Use circulation data.
- *Project Gutenberg Activity*: View circulation data for any Project Gutenberg titles that were not added to your collection as part of the Project Gutenberg Simultaneous Use plan.
- *Recommendations*: If you're using RTL, at your OverDrive website, use this report to review your user's recommendations and convert recommended titles into a cart in one click.
- *Title Status and Usage*: View details and circulation data for all titles in your collection. Includes One Copy/One User, Metered Access, Cost Per Circ, and/or Simultaneous Use titles.
- *Library Statistics Report*: View an overview of your digital library, including overall and current checkouts, holds, and users.
- *Most Viewed Titles*: See the 50 most-viewed titles (based on visits to titles' details pages) at your OverDrive website.
- *Purchases & Subscriptions*:
  - *Purchased Titles*: View details for all titles purchased within a specific date range. Includes One Copy/One User and Metered Access titles.
  - *Purchase Order History*: View all purchase orders placed by library, including Holds Manager, RTL Manager, and Smart List purchases.
  - *Content Credit Order History*: View all content credit purchased.
  - *Simultaneous Use Orders*: View your library's Simultaneous Use subscriptions.
  - *CPC Invoicing History*: View past invoices for Cost Per Circ checkouts.
  - *MARC Records Orders*: View all MARC record orders to date.
  - *Recalled Content*: There may be occasions when purchased content is recalled (for example, if the digital rights for a title were incorrect). View details on recalled content, including titles, purchase details, and credits issued.
- *User Statistics*:
  - *Search Checkouts*: Search your users' checkouts by barcode, title, or checkout ID. IF needed, reactivate download links.
  - *New User Registration*: View new user registration by day, month or branch.
  - *User Traffic*: View user traffic statistics, including active visits and page views.
  - *Unique User Activity*: View unique users' checkouts by day, month, and/or branches.
- *Website Statistics*:
  - *Top Referrer URLs*: See how users are finding your site. View the top 50 referral URLs from which your users access your digital library.
  - *Most Viewed Pages*: See the 50 most-viewed pages at your OverDrive website.

Screenshot of the OverDrive Marketplace Reports Screen

### *Account Access*

OverDrive does not provide library staff with direct access to patron accounts. Through OverDrive Marketplace, staff with appropriate permissions can reset downloads, automatically return a title from a user's account before the expiration of the lending period, and merge a user's original and new IDs.

### *Customization*

OverDrive offers several customizable features for the library, including loan periods, website colors, tout across the website, links and promotions of the library on the OverDrive-hosted page, custom collections and multi-lingual user interfaces. OverDrive offers the library the ability to have Kids and Teen eReading rooms, which can filter out content that may not be suitable for younger viewers and can have a direct URL to avoid younger viewers seeing more mature content.

OverDrive Marketplace also offers the Curate option, where a library can create curated collections of titles owned in the digital collection and publish them on the OverDrive-hosted website to showcase and boost circulation for the included titles.

### *Comprehensive Online Title Database*

As part of the OverDrive service and at no additional cost, OverDrive provides access to its online digital content repository that is updated daily with new digital content, OverDrive Marketplace. OverDrive Marketplace offers over a million items of digital content from thousands of supplying publishers that can be purchased by the library to be made available for lending at the OverDrive-hosted site. As a current customer, Mesa Public Library can log in and view the available content, so no trial access is required. There will be no loss of access during the review period. OverDrive includes, at no additional cost, multiple review sources within



OverDrive Marketplace that can be read by staff when sampling and selecting digital content. There are no maximum number of staff users that can be added for Marketplace access, and each user can be set up with role-based access depending on their needs within the system. OverDrive confirms that we can meet all of the title database system requirements as outlined in section 4.1.3 of the RFP.

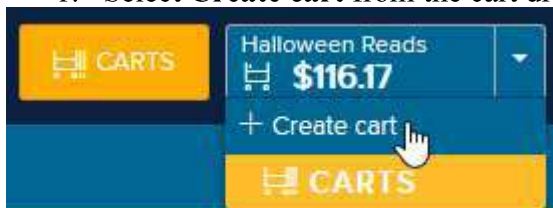
#### *Web-Based Ordering And Inventory*

Over the last 36 years, OverDrive has solidified its presence as an industry leader. OverDrive now offers the largest digital content catalog in the world to more than 81,000 libraries and schools in 106 countries around the world and the highest-rated apps that are built to create reading happiness. To date, OverDrive has seen over 3 billion checkouts since our inception. OverDrive serves libraries of all sizes, including the Greater Phoenix Digital Library consortium. Account by account, OverDrive has established long-term, trusted relationships with publisher, library, and school partners around the world.

We partner with 58,000 major and independent publishers to deliver the largest digital content catalog of ebooks, audiobooks, streaming videos and magazines. Our digital catalog contains over 5 million titles to assist libraries in building their custom digital book collection. Our catalog includes titles from all genres: popular fiction, romance, children's books, young adult, technology, travel, nonfiction, mystery, thriller, suspense, historical fiction, business, memoir and biography, science fiction and fantasy, and many more. We offer an ever-growing catalog of foreign language content. Libraries of all sizes can benefit from the breadth and depth of our collection: our catalog truly offers something for the enjoyment of every type of patron no matter their interest. Our total catalog includes nearly 2.5 million ebooks, 260,000 audiobooks, and over 3,000 magazines. Additionally, we have nearly 140,000 Spanish titles available from 4,150 Spanish publishers.

Purchases are made through OverDrive Marketplace, our digital hub for content. You can create as many carts as you'd like in OverDrive Marketplace, so you can organize titles as you shop. There are three ways to create a cart:

1. Select **Create cart** from the cart drop-down in the top-right corner of the site.



2. Click **Create cart** on the right side of a search results page, featured list, or Simultaneous Use publisher catalog.
3. Click **Carts** (in the top-right corner of Marketplace), then **Create cart**.

When you create a cart, you'll see the option to pin that cart (which makes it active so you can start adding titles to it). You will also see the option to lock your cart, which prevents most other Marketplace users from making changes to it.



The cart automation tools in Marketplace will automatically build carts or submit purchase orders based on criteria you set. This is a data-driven way to build and maintain your collection based on important factors like user demand or title expiration cycles. Smart Lists, for example, can be created using criteria like price, street date, subjects, popular authors and series, languages, and more. This is a great way to repurchase expired or expiring Metered Access content.

### *Polaris Integration*

OverDrive and Polaris work closely together in many ways, including to provide Discovery, Circulation, and Patron API systems. Polaris can establish a direct connection with the OverDrive catalog for any library and this then allows them to create a seamlessly integrated catalog experience. We have a team that works directly with many of the Polaris technicians and we are constantly working on creating new APIs for use with the Polaris system. There are no additional costs associated with system integrations.

### *Customer Support*

OverDrive provides every partner with several points of contact to ensure a high-quality level of service, including a day-to-day account contact (Account Specialist), a day-to-day technical contact (Product Support Specialist), and a day-to-day collection development support specialist (Digital Content Librarian). This team works with every partner to ensure that they have a high-quality digital collection that will circulate among its customers, as well as provide technical support for library staff to make sure all customers are able to understand and use the platform. OverDrive responds to all support inquiries within one (1) business day and strives to resolve all issues raised as quick as commercially possible.

OverDrive applies a proven and rigorous approach to the handling and resolution of complaints. All complaints are logged internally on a ticketing system to ensure that the full details are captured. The tickets raised are evaluated to determine if their resolution will require new development and improvement of the system. Tickets are also reviewed to determine if clarifications need to be added to the OverDrive Help pages and documentation. Once the necessary action is determined, the complainant and affected customers are informed of the remedial action being taken and the likely timeline involved.

OverDrive also sends customer satisfaction surveys following support tickets, and sends customer satisfaction questionnaires when new products are released as well as at other intervals to monitor customer satisfaction. OverDrive carefully monitors customer feedback, and allows customers to make development requests to ensure that the product offers the features that customers are seeking, and that those features work as expected.

Patrons have support options 24/7 by contacting [support@overdrive.com](mailto:support@overdrive.com), using the “help” feature within the Libby app, or searching on [help.libbyapp.com](http://help.libbyapp.com).

### *Weeding Capabilities*

Mesa Public Library can weed titles to hide them in Libby and on the OverDrive hosted website. To weed (or unweed) titles, follow these steps:



- Sign into OverDrive Marketplace
- In the **Admin** drop-down, select **Weeding**.
- Select **Search collection**.
- In the search box, enter any search criteria for the titles you'd like to weed (or unweed), then click **Search**.
  - If you'd like to weed titles, make sure that your "Weed status" is set to **Not weeded**.
  - If you'd like to unweed titles, make sure that your "Weed status" is set to **Weeded**.
- Check the box next to the titles you'd like to weed (or unweed).

<input type="checkbox"/>	1		101 Amazing Harry Potter Facts
<input checked="" type="checkbox"/>	2		Charmed Knits: Projects for Fans of Harry Potter
<input type="checkbox"/>	3		Daniel Radcliffe: Harry Potter Star

- Click **Weed title(s)** or **Unweed title(s)**.

- Select **Confirm**.

When you weed a title, any users who borrowed it will not be able to renew their loan. Users who have holds on the title will not be notified of its removal, so you will need to manually remove their holds. Weeded titles may take up to 24 hours to disappear from your collection.

Please note that you can also set up an automatic weeding plan to regularly weed titles that meet certain criteria. For more information, please refer to [OverDrive Marketplace Help](#).

#### *Invoice Requirements*

OverDrive confirms it can provide a separate, paper invoice, as the standard procedure is to email all invoices to the designated accounting contact. See attached for sample invoice for digital content orders, indicating ISBN, Title, Publisher, Format, Quantity, SRP, Amount Due, and Purchase Order No. (if provided), as well as customer information (customer name, account number, invoice number).

#### *MARC Records*

OverDrive offers MARC records from multiple sources. OverDrive offers records via OCLC at a pass-thru cost of \$1.50 per record. In addition to OCLC MARC records, OverDrive offers no cost MARC Records via the OverDrive MARC Express option. These are minimum, ready to load records in MARC 21 format that can be edited locally as needed. These are created in-



house by OverDrive from publisher-provided metadata and delivered to an OverDrive-hosted FTP site within 24-48 hours after placing an order with OverDrive.

## Essential Services

### Multiple Purchasing Models

OverDrive offers flexible purchasing options to maximize funds and impact. The options available for any given title depends on the publisher. These lending models include:

- Simultaneous use (SU): The library purchases a subscription, granting their patrons virtually unlimited access to the title. There is no limit to how many patrons can have the title checked out at one time.
- One Copy/One User (OCOU): This lending model is what most closely represents a library book in the physical world. If the library purchases 1 OCOU unit of a title, one patron can check out the title at a time. When the patron returns the title, another patron can then check it out. Libraries typically own OCOU forever after they are purchased.
- Metered Access by Time (MA:Time): This lending model behaves essentially the same way as OCOU, but the units are removed from collection after a certain period of time. If a library owns 1 unit of a MA:Time title, one patron can check the unit out at a time.
- Metered Access by Circ/Checkout: A library can purchase one unit of a metered access by checkout title with 26 circs, for example. The unit will then circulate to one patron at a time for up to 26 checkouts. After the 26th checkout occurs, the unit is removed from the collection. The 26 circs are not simultaneous; a single unit can only be checked out by one patron at a time.
- Metered Access Concurrent Use (MACU): A library will typically purchase 1 unit of this lending model, which means 100 checkouts. This lending model, unlike Metered Access by Circ, can be checked out simultaneously by patrons. The units deplete as they are checked out.
- Cost per Circ (CPC): The library sets a monthly budget for the format class, for example \$100 for ebooks. Each time a CPC ebook is checked out, the library's budget is consumed. A title is typically priced between \$1 - \$10 for CPC. The library is only charged when checkouts are made.

Please note that lending models are determined by the supplying publisher, as well as whether or not multiple lending models are available for one title.

### Collection Development Services

At no additional cost, OverDrive provides the assistance of a Digital Content Librarian, will work directly with you and be the go-to contact for all questions related to content and usage of the OverDrive Marketplace. Your dedicated OverDrive Digital Content Librarian will also work with an internal Product Support Specialist, and both individuals are vital resources that you can use to help develop popular lists, carts that will be of interest, show titles that circulate at other libraries but not currently in stock, etc. The Collection Development team can also help the library with awareness and promotional needs, including developing local book clubs and reading programs to ensure success with your digital collection. Your Digital Content Librarian is available, upon request, to visit on-site with the library to discuss your content needs, general concerns, and wish-list items for your OverDrive service to make sure it is of the utmost



relevancy to your local community. OverDrive also offers unparalleled dedication and customization with your required collection development needs.

### Application Programming Interface (API)

Deep integration, available via free OverDrive APIs, allow libraries to integrate the OverDrive digital collection into its existing ILS catalogue so that patrons are only searching a single catalogue. OverDrive works with ILS providers to integrate with the OverDrive APIs, as may be requested by their customers.

OverDrive APIs allow third party applications to integrate OverDrive digital collections to discover and circulate digital media, at no additional cost from OverDrive. OverDrive APIs are designed to enable users to discover products within OverDrive digital media collections while honoring the rights of OverDrive, its users, customers, and business partners. Discovery and borrowing integration is supported in all major ILS catalogues through the OverDrive APIs (<http://developer.overdrive.com/>). No additional fees are assessed by OverDrive to use the APIs for integration with your ILS.

Available OverDrive APIs include:

- Authentication APIs (Client authentication, Granted authentication, Patron Authentication);
- Discovery APIs (Library Account, Search, Metadata, Library Availability); and
- Circulation APIs (Patron Information, Holds, Checkouts, Download).

### Ability to Print Invoices Online

OverDrive confirms that library partners can print invoices online via OverDrive Marketplace. Partners can also save invoices to a PDF.

### Ability To Check Order History Online

OverDrive offers the ability to research orders via the “Purchase Order History” report in Marketplace, to show each individual purchase. Also, by viewing “Purchased Titles” report, the library can view titles purchased within a specific date range to show how many titles have been purchased and costs to provide a summary view of the orders.

### Narrations

OverDrive offers high-quality, professionally narrated digital audiobooks from its supplying publishers. Digital samples are available within OverDrive Marketplace.

### Reports

OverDrive offers many management reports to all library partners. The following statistical reports are available at any time for Library Administrators and Marketplace users with reporting permissions. These reports can be created by Marketplace users.

*Merchandising Management:* View all saved featured lists, used in Marketplace merchandizing. As needed, rename, edit or delete lists.



- Collection Usage Reports:
- Current Holds List: View titles your users have on hold.
- Checkouts Report: View One Copy/One User, Metered Access, Cost per circ and/or Simultaneous Use circulation data.
- Recommended titles: If you're using RTL, at your OverDrive website, use this report to review your user's recommendations and convert recommended titles into a cart in one click. Sortable by recommendations, member library and/or time period.
- Title Status and Usage: View details and circulation data for all titles in your collection. Includes One Copy/One User, Metered Access, Cost Per Circ, and/or Simultaneous Use titles.
- Most Viewed Titles: See the 50 most-viewed titles (based on visits to titles' details pages) at your OverDrive website.

#### *Purchases & Subscriptions:*

- Purchased Titles Summary: View details for all titles purchased within a specific date range. Includes One Copy/One User and Metered Access titles.
- Purchase Order History: View all purchase orders placed by library, including Holds Manager, RTL Manager, and Smart List purchases.
- Content Credit History: View all content credit purchased.
- Simultaneous Use Orders: View your library's Simultaneous Use subscriptions.
- MARC Records Orders: View all MARC record orders to date.
- Recalled Titles: There may be occasions when purchased content is recalled (for example, if the digital rights for a title were incorrect). View details on recalled content, including titles, purchase details, and credits issued.

#### *User Statistics:*

- Search Checkouts: Search your users' checkouts by barcode, title, or checkout ID. Reactivate download links.
- New Users: View new user registration by day, month or branch.
- User Visits & Page Views: View user traffic statistics, including active visits and page views.
- Unique User: View unique users' checkouts by day, month, and/or branches.

#### *Website Statistics:*

- Top Referrer URLs: See how users are finding your site. View the top 50 referral URLs from which your users access your digital library.
- Most Viewed Pages: See the 50 most-viewed pages at your OverDrive website.
- 

For additional information about OverDrive's management reports, see:

<https://help.marketplace.overdrive.com/categories/reports.htm>

Reports can be run at any time by a user with the appropriate permissions. You can also export CSV files of reports in Marketplace for your convenience. This option is recommended for large



reports, which may load slowly or time out in Marketplace. To export your report, enter your criteria in the “Report options” window, then click **Create worksheet**.

If you have already loaded the report in Marketplace, you can click **Create worksheet** in the top-right corner of the gride to export your results.

## Preferred Services

### Content Sharing with Other Libraries

OverDrive works with both consortia and stand-alone libraries. Additionally, OverDrive offers Public Library CONNECT (PLC) which extends your library’s digital connection to the K-12 students in your community and helps them read more. This is free for libraries and no integrations are required. Students install the free Sora reading app, our K-12 app for students. Kids connect to your library with their student ID, and titles are filtered for maturity level.

### Exclusives

OverDrive is the only ebook service to offer compatibility with the Kindle app and device.

## References

Phoenix Public Library

Danielle Stanley

[\(602\) 534-8360](tel:6025348360)

[danielle.stanley@phoenix.gov](mailto:danielle.stanley@phoenix.gov)

1221 N Central Ave

Phoenix, AZ 85004

Consortium member

2009- present

Apache Junction Public Library

Pam Harrison

[480-474-8615](tel:4804748615)

[pstandhart@ajcity.net](mailto:pstandhart@ajcity.net)

1177 N. Idaho Road

Apache Junction, AZ 85119

Consortium member

2009- present

**EXHIBIT B  
PRICING**

**PRICING AND COMPENSATION**

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish **Library Digital Media** to the City of Mesa at the price(s) stated below.

Please describe any platform fees. In addition, please describe any digital digital subscriptions you offer along with a description and cost of each product. Examples include but are not limited to: digital newspapers, collection analysis, cataloging tools, etc.

Item	Platform Fee and Digital Subscriptions	Cost Per Year	Description
1	Annual Platform Fee	\$ 4,500.00	OverDrive Annual Hosting and Maintenance
2	OverDrive Content Credit: includes ebooks, audiobooks, magazines and streaming media services	\$163,428	Library Participation Future Content Purchases
3			
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11			

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

DELIVERY: See Mesa Standard Terms and Conditions.

Vendor OverDrive, Inc.

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

16-Nov-22  
RFP # 2023058

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

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

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

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the "Contractor Immigration Warranty").
  - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
  - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
  - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote nondiscrimination. As such, Contractor represents and warrants that it does not discriminate against any person on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender identity, veteran's status, marital status, familial status, or genetic information (collectively, "protected status") in employment, housing, or facilities, establishments, accommodations, services, commodities, or use offered to or enjoyed by the general public. Contractor further represents and warrants that it does not, on the basis of protected status, refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. In performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws and executive orders regarding non-discrimination including, but not limited to, the following (as amended): Title VII of the U.S. Civil Rights Act of 1964; Section 504 of the Federal Rehabilitation Act; Age Discrimination Act of 1967; Equal Pay Act of 1963; and Americans with Disabilities Act of 1990.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of Israel.
- g. **Forced Ethnic Uyghur Labor Prohibition.** In accordance with the requirements of A.R.S. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of the contract that it will not, use (i) the forced labor of ethnic Uyghurs in the People's Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic

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

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

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

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

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

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

12.1. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.

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

13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

14. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
16. **DEFAULT.**
- a. A party will be in default of the Agreement if that party:
- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
  - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
  - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner;
  - iv. Fails to carry out any term, promise, or condition of the Agreement; or
  - v. Is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
  - b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the

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

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

or employees (collectively, including Contractor, "Contractor Personnel"): (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.

- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like, and professional manner. The City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this

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

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

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

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

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

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

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

Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.

47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to City, Contractor shall comply with the Payment Card Industry Data Security Standards ("PCI DSS") and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of City's and/or any customer's credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.