

# EXHIBIT A



## AGREEMENT PURSUANT TO SOLICITATION

### CITY OF MESA AGREEMENT NUMBER 2021073 PRIVATE SECURITY GUARD SERVICES

#### CITY OF MESA, Arizona ("City")

|                  |                                                                        |
|------------------|------------------------------------------------------------------------|
| Department Name  | City of Mesa – Purchasing Division                                     |
| Mailing Address  | P.O. Box 1466<br>Mesa, AZ 85211-1466                                   |
| Delivery Address | 20 East Main St, Suite 450<br>Mesa, AZ 85201                           |
| Attention        | Kristy Garcia, NIGP-CPP, CPPO, CPPB<br>Procurement Supervisor          |
| E-Mail           | <a href="mailto:Kristy.Garcia@MesaAZ.gov">Kristy.Garcia@MesaAZ.gov</a> |
| Phone            | (480) 644-5052                                                         |

With a copy to: City of Mesa – Police Administration  
Attn: Beth Thuringer, Management Assistant I  
P.O. Box 1466  
Mesa, AZ 85211-1466  
[Beth.Thuringer@MesaAZ.gov](mailto:Beth.Thuringer@MesaAZ.gov)

AND

#### UNIVERSAL PROTECTION SERVICE, LP dba ALLIED UNIVERSAL SECURITY SERVICES, ("Contractor")

|                  |                                                                      |
|------------------|----------------------------------------------------------------------|
| Mailing Address  | 7776 S. Pointe Parkway West, Suite 290<br>Phoenix, AZ 85044          |
| Remit to Address | PO Box 31001-2374<br>Pasadena, CA 91110-2374                         |
| Attention        | Stephanie Switz, Business Development Manager                        |
| E-Mail           | <a href="mailto:Stephanie.Switz@AUS.com">Stephanie.Switz@AUS.com</a> |
| Phone            | (480) 320-0928                                                       |
| Fax              | (480) 464-4659                                                       |

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 5th day of April 2021, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Allied Universal Security Services, a California company ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

### RECITALS

- A. The City issued solicitation number 2021073 ("Solicitation") for **PRIVATE SECURITY GUARD 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 **May 1, 2021** and ending on **April 30, 2024**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.

- 1.1 Renewals. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

- 1.2 Extension for Procurement Processes. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

- 2. Scope of Work. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A ("Scope of Work")**. Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

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

4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.

- a. Agreement
- b. Exhibits
  - 1. Mesa Standard Terms & Conditions
  - 2. Scope of Work
  - 3. Other Exhibits not listed above
- c. Solicitation including any addenda
- d. Contractor Response

5. **Payment.**

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

- 5.2 **Prices.** All pricing shall be firm for the annual 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 annual 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 **Producer Price Index for PCU561612 Security guards and patrol services**, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/ppi/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 include the City of Mesa, its agents, representatives, officials, volunteers, guards, elected officials, and employees as additional insured, to the extent of the Contractor's indemnification obligations under this Agreement and up to the required insurance coverage amount, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts. The additional insured endorsement to each such policy shall cover the foregoing parties as additional insureds where required by written contract.

**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, guards, 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 \$1 million per occurrence/\$2 million aggregate Commercial General Liability Insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, guards, elected officials and employees shall be included as additional insureds, to the extent of the Contractor's indemnification obligations under this Agreement and up to the required insurance coverage amount. The additional insured endorsement to such policy shall cover the foregoing parties as additional insureds where required by written contract.
  - 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.
  - 6.9.4 Professional Liability (Errors and Omissions Liability), the Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence Professional Liability insurance.
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:
- 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;
  - 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;
  - 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
  - Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Scope of Work
  - (B) Pricing
  - (C) Mesa Standard Terms and Conditions
  - (D) Special Terms and Conditions
  - (E) Federal Certifications
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:  Digitally signed by Edward Quedens  
DN: cn=Edward Quedens, o=City of  
Mesa, Arizona, ou=Business  
Services,  
email=ed.quedens@mesazgov,  
c=US  
Date: 2021.04.06 07:06:37 -07'00'  
Adobe Acrobat version:  
2020.013.20074

Printed Name

Title

Date

**ALLIED UNIVERSAL SECURITY SERVICES**

By: 

Steve Claton  
Printed Name

President  
Title

3/24/21  
Date

**REVIEWED BY:**

By:   
Kristy Garcia, NIGP-CPP, CPPO, CPPB  
Procurement Supervisor

**EXHIBIT A  
SCOPE OF WORK**

1. **INTENT:** Contractor shall provide unarmed and vehicle patrol security for various City of Mesa (City) departments and locations.
2. **SCOPE OF WORK:** Contractor shall provide security guard services to the following facilities: Mesa Arts Center, Arizona Museum of Natural History, City of Mesa Main Library, Downtown Customer Service Center, a Downtown Mesa Daytime Mobile Patrol, and the East Mesa Customer Service Center. All work performed under this Agreement will fall under the category of general security service; however, hours and duties may vary according to location. This Agreement is for physical security services only; no electronic security services are being requested. In addition, Contractor will be responsible for the provision of a 4-seat or larger street legal golf cart style vehicle to be used in the mobile patrol and one 6-seater for shuttle services as needed between City buildings and parking structures.

**Special Event Security:** The City hosts several special events/festivals throughout the year to include the Arizona Celebration of Freedom – Independence Day event (July), Merry Main Street Festival (Nov/Dec), Falcon Field Open House (Mar), East Valley Martin Luther King Jr. Parade and Festival (Jan). Other special events may be scheduled throughout the year as needed and includes events such as Grand Openings, Groundbreaking events, or State of the City, etc.

Single Use special event Security Guards will be required prior to event day and day of event. Various event coverage could include nights, weekends, and various hours, and multiple guards to provide adequate coverage. Guards generally needed range between 1-50 guards and will work between 5-12 hours per shift depending on event.

Security services resulting from this award shall not include light rail (Metro) security services but will require interaction and teamwork with Metro security administration and personnel.

Required Coverage by location:

The Contractor shall provide additional Security Guards to perform security services at other City facilities or locations where protection is deemed necessary by the Contract Administrator or designee, at no increase in the hourly billing rates. Additional service sites may be added or deducted as needed at the same billing rates.

The City is currently utilizing a total of fourteen (14) full time Security Guards in the following locations:

| Location                                                                         | Shift                                                                                                                                                                                                                                                 | Weekly hourly total |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Mesa Arts Center<br>One E. Main St.<br>Mesa, AZ 85201                            | Two (2) Guards from 0600 to 0100<br>Wednesday through Sunday. Two (2)<br>Guards 0700 to 1800 on Monday and<br>Tuesday.                                                                                                                                | 234*                |
| Mesa Arts Center<br>One E. Main St.<br>Mesa, AZ 85201                            | Various event coverage<br>primarily on nights and weekends                                                                                                                                                                                            | 100*                |
| City Main Library<br>64 E. 1 <sup>st</sup> St.<br>Mesa, AZ 85201                 | One (1) Guard from 0830 to 2030 on<br>Monday through Thursday and<br>Two (2) Guards from 1000 to 1800<br>Monday through Thursday<br>One (1) Guard from 0830 to 1730<br>Friday and Saturday<br>Two (2) Guards from 1000 to 1700 Friday<br>and Saturday | 112*                |
| Red Mountain Branch<br>Mesa Public Library<br>635 N. Power Rd.<br>Mesa, AZ 85205 | One (1) Guard from 0830 to 2030 on<br>Monday through Thursday and<br>One (1) Guard from 0830 to 1730 Friday<br>and Saturday                                                                                                                           | 66*                 |
| Arizona Museum of Natural<br>History<br>53 N. MacDonald St.<br>Mesa, AZ 85201    | One (1) Guard from 0930 to 1730 on<br>Tuesday through Friday and<br>One (1) Guard on Saturday from 1030 to<br>1730 and Sunday from 1230 to 1730                                                                                                       | 44*                 |
| i.d.e.a. Museum<br>150 W. Pepper Place<br>Mesa, AZ 85201                         | One (1) Guard Tuesday, Wednesday,<br>Thursday, Saturday 0830 to 1630 and<br>One (1) Guard Friday 0830 to 1830 and<br>One (1) Guard Sunday 1130 to 1630                                                                                                | 47*                 |
| Downtown Customer Service<br>Center<br>55 N. Center St.<br>Mesa, AZ 85201        | One (1) Guard from 0630 to 1830<br>Monday through Thursday<br>One (1) Guard from 0730 to 1230 Friday                                                                                                                                                  | 53                  |
| East Mesa Customer Service<br>Center<br>6935 E. Decatur St.<br>Mesa, AZ 85207    | One (1) Guard from 0630 to 1830<br>Monday through Thursday                                                                                                                                                                                            | 48                  |
| Downtown Mesa Mobile Patrol<br>20 E. Main St.<br>Mesa, AZ 85201                  | One (1) Guard from 0900-1900<br>Monday through Thursday<br>And one (1) golf cart                                                                                                                                                                      | 40                  |
| Employee Shuttle Service<br>20 E Main St.<br>Mesa, Az 85201                      | One (1) Guard Monday through Thursday<br>from 0900 to 1900<br>And one (1) golf cart                                                                                                                                                                   | 40                  |
| Special Events<br>Various Locations                                              | Various event coverage to include, days,<br>nights, weekends, and holidays. One (1)<br>– fifty (50) guards.                                                                                                                                           | 100                 |
| Account Manager                                                                  | One (1) full-time Account Manager This<br>position is in addition to the above<br>required coverage                                                                                                                                                   | 40                  |

\*Please note the hours listed are based on City locations being fully open and operating. Due to COVID-19 restrictions some City locations will not be fully open until late 2021 or early 2022.

3. **MANDATORY MINIMUM REQUIREMENTS:** Contractor shall meet all minimum requirements and submit documentation that clearly demonstrates compliance.

- a. Contractor must possess a current agency license authenticated by the Arizona Department of Public Safety authorizing Contractor to conduct the business of private Security Guard service pursuant to Title 32, Chapter 26, Security Guards. Contractor shall be licensed, and license shall remain in good standing for the entire term of the contract.
- b. Contractor must demonstrate prior municipality or government experience and have conducted business within the Phoenix metropolitan area for a minimum of three (3) years.
- c. Contractor must have and maintain full time company representation located in the Phoenix metropolitan area with the ability and authority to address all contract issues that may develop.
- d. Contractor shall pay the minimum hourly pay rates for assigned security guards and supervisors that equal or exceed the minimum hourly pay rates identified in the Agreement. Additional mark-up is allowed to cover profit and overhead.
- e. All proposed fees must be all inclusive with no additional fees or administrative charges beyond what is offered on the attached Pricing worksheet. Hourly bill rate shall include healthcare, paid sick leave, vacation, training, drug-screening, uniforms, etc.

4. **PERFORMANCE REQUIREMENTS AND MEASURES:**

- i. **Employee Identification and Work Apparel.** The Contractor's employees shall maintain proper work apparel at all times while on City property. Contractor shall ensure all employees wear company uniforms mutually agreed upon by the Contractor and the City. The Contractor is responsible for furnishing these uniforms. Contractor shall also be responsible for providing badges and Identification nametags. Employees shall maintain a professional demeanor and show respect to other personnel at the work site. Employees will be dressed appropriately for the work with badges and uniforms that identify them as employees of the Contractor.
- ii. **Employee Contact Information.** It is the City's desire to have available an email address and phone number for each permanent guard placed at the City. This allows communication via email, text, or phone call to contact and communicate with a Guard when needed.
- iii. **Employee Qualifications.** Contractor shall be responsible for hiring, training, and supervision of all Guards assigned to the City. This will include ensuring that all Guards have a Security Guard License (guard card) and are CPR/AED Certified. In addition, Contractor shall work with City Contract Administrator to develop site specific post orders and ensure that Guards are trained on these orders.
- iv. **Guard Duties.** The duties of Guards shall include, but not be limited to:
  - 1. Provide general surveillance of exterior and interior areas of City facilities and property.
  - 2. Provide proper locking and unlocking of buildings, gates, and other areas in accordance with site-specific post orders.
  - 3. Patrol particular areas at specific times.
  - 4. Attend to persons requiring routine and emergency assistance.
  - 5. Provide personal safety escorts as needed.
  - 6. Provide a visible security presence.
  - 7. Monitoring employees, visitors and suppliers seeking entrance in a manner consistent with City procedures.
  - 8. Small to very large special events requiring security services.
  - 9. Where applicable, screening persons, bags, parcels, and packages entering City facilities or City events for the presence of weapons, explosives, hazardous material

or other contraband as identified by the Contract Administrator. Screening may involve the use of X-ray machines, walk thru or hand-held magnetometers as well as visual inspections of property and vehicles.

10. Perform other duties consistent with security requirements.
11. Completion of shift activity logs at the end of each shift and submission of those logs to the City Contract Administrator or designee.

b. **Special Event Guard Duties.** In addition to the above Guard Duties, the duties of Guards at special events shall include, but not be limited to:

1. Securing the premises against unauthorized entry.
2. Scanning tickets at the front gate.
3. Conducting appropriate security checks (including bag checks) of patrons upon entering. Including but not limited to wandering and wrist banding.
4. Checking ID and wrist banding for alcohol sales.
5. Providing security guards sufficient for monitoring event to prevent and address behavioral issues, including, but not limited to:
  - a. Underage drinking
  - b. Illegal drug use
  - c. Fighting
  - d. Blocking aisles
  - e. Harassing other patrons or staff
  - f. Rowdy or unruly behavior
6. Preventing access to restricted areas.
7. Parking Control Attendants and lot security.
8. Overnight security as needed for multi-day events and/or events with load-in or load-out on a separate day.
9. Providing event security staff with adequate training and appropriate equipment (uniforms, radios, etc.).
10. Providing a means of communication with venue staff at all events.

c. **Weapons.** All posts and services performed under the scope of this Agreement shall be by unarmed security guards. On-site guards shall not be in possession of, or carry any weapon, unless mutually agreed upon by the Contractor, the City Contract Administrator, and the Mesa Police Department.

d. **Experience.** All full-time permanent guards assigned to this account must have prior military, law enforcement, or Department of Corrections (DOC) experience. Any account manager must have previous supervisory experience in a military or law enforcement capacity. It will be at the City's option to waive this requirement depending on City location and need at the time of placement.

- i. Any "single-use" special event support staff officer shall not be required to have prior military, law enforcement, or DOC experience.

5. **CONTRACTOR'S ACCOUNT MANAGER REQUIREMENTS:** The Contractor's Account Manager must be capable of performing the following administrative tasks and functions in coordination with the City's Contract Administrator. The City will provide an on-site office location to be used by the account manager.

a. **Communication requirement:**

- 1) Ability to listen, mediate and effectively resolve issues;
- 2) Communicates with City employees, management, community organization, public officials, and general public;
- 3) Conduct security and/or safety related training sessions;
- 4) Prepares clearly written documents.

b. Manual/Physical requirement:

- 1) Operates variety of standard office equipment to communicate, prepare reports, and tabulate data;
- 2) Inspects, monitors and/or evaluates information, work related conditions;
- 3) Meets scheduling and attendance requirements.

c. Mental requirement:

- 1) Plan, organize and develop security and safety policies and procedures;
- 2) Maintain Safety Manual and Disaster Preparedness Program;
- 3) Resolve procedural, operational, personnel and other work related problems regarding security and safety.

d. Knowledge of:

- 1) Security and safety procedures and practices;
- 2) Procedures, equipment and safety hazards common to security work;
- 3) Principals of security and fire alarm system design;
- 4) Computer applications relating to security systems;
- 5) Industry standards and technological improvements in security and audio/video monitoring equipment;
- 6) Crowd management;
- 7) Emergency management concepts;
- 8) Budgeting and contract administration;
- 9) Supervision including interviewing, hiring, and termination skills.

e. Ability to:

- 1) Maintain records of operations and activities;
- 2) Develop security and safety training programs;
- 3) Implement disaster recovery plans;
- 4) Present facts clearly and concisely both verbally and in writing to individuals and groups;
- 5) Supervise Private Security staff;
- 6) Establish and maintain effective working relationships.

6. **COMMUNICATIONS SKILLS:** It is important that the Account Manager and Guards assigned to this Agreement be proficient in the English language to receive/transmit instructions, to communicate with the patrons and City staff. Security guards must write English in order to prepare written incident reports.

7. **PAYMENT AND REPORTING:** Contractor shall provide pay that equals or exceeds the minimum hourly pay rates for assigned Security Guards and Supervisors as follows:

- a. Regular time – Standard Security Guard Wage – minimum \$16.00/hour
- b. Over time – Standard Security Guard Wage – minimum \$24.00/hour
- c. Regular time – Special Event Security Guard Wage – minimum \$13.00/hour
- d. Over time – Special Event Security Guard Wage – minimum \$19.50/hour
- e. Regular time – Account Manager Wage – minimum \$33.00/hour

The Contractor shall be required to invoice the City on a monthly basis. Invoices are to be submitted on or before the 10th of each month for the preceding month. Payment will be made on a monthly basis within thirty (30) working days after receipt of an itemized invoice from the Contractor and acceptance by the City. At the City's request, the Contractor shall submit copies of payroll reports. Payroll reports shall include names of employees, hours worked, days worked, location worked, and classification for each employee. The amounts invoiced shall be those agreed upon by this Agreement or by an amendment/change order to the Agreement. The hourly rate shall include all labor, insurance, uniform, overhead, profit, and any other incidental costs to perform the contracted service.

8. **CONTRACTOR'S GOLF CARTS:** Contractor will be required to provide necessary golf carts for patrols and/or events. Offeror shall provide a daily cost to provide an appropriate vehicle for use in performing the patrol functions outlined in this Agreement. The cost shall include all cost necessary to operate and maintain the vehicles used in the contract to include licensing, insurance, fuel, maintenance, etc. Contractor shall operate and maintain the vehicles in accordance with all applicable laws and regulations of the State of Arizona and the City.
9. **CITY HOLIDAYS:** The City has nine (9) fixed Holidays. The City will only authorize Holiday/Overtime pay rates should Security Guard be required on City recognized holidays. Holidays are as follows:

New Year's Day  
Martin Luther King Jr. Day  
Presidents Day  
Memorial Day  
Independence Day  
Labor Day  
Veteran's Day  
Thanksgiving Day and Friday after Thanksgiving  
Christmas Day

**EXHIBIT B  
PRICING**

Pursuant to all the contract specifications enumerated and described in this Agreement, Contractor agrees to furnish **Private Security Guard Services** to the City of Mesa at the price(s) stated below.

| Item No. | Description                                  | Estimated Weekly Hours | Hourly Rate | Markup % | Billable Rate |
|----------|----------------------------------------------|------------------------|-------------|----------|---------------|
| 1        | Standard Security Guard - Regular Time       | 680                    | \$ 16.00    | 37.2%    | \$ 21.95      |
| 2        | Standard Security Guard - Overtime           | 10                     | \$ 24.00    | 37.2%    | \$ 32.93      |
| 3        | Account Manager - Regular Time               | 40                     | \$ 33.00    | 37.2%    | \$ 45.28      |
| 4        | Standard Security Guard - Mobile Patrol Unit | 80                     | \$ 16.00    | 37.2%    | \$ 21.95      |

| Item No. | Description                                            | Estimated Weekly Hours | Weekly Rate |  |
|----------|--------------------------------------------------------|------------------------|-------------|--|
| 5        | One (1) 4-seat Golf Cart Rental for Mobile Patrol Unit | 40                     | \$ 64.62    |  |
| 6        | One (1) 6-seat Golf Cart Rental for Shuttle Services   | 40                     | \$ 87.69    |  |

| Item No. | Description                                 | Estimated Annual Hours | Hourly Rate | Markup % | Billable Rate |
|----------|---------------------------------------------|------------------------|-------------|----------|---------------|
| 7        | Standard Security Guard - Holiday Time      | 60                     | \$ 24.00    | 37.2%    | \$ 32.93      |
| 8        | Special Event Security Guard - Regular Time | 100                    | \$ 13.00    | 37.2%    | \$ 17.84      |
| 9        | Special Event Security Guard - Overtime     | 10                     | \$ 19.50    | 37.2%    | \$ 26.75      |
| 10       | Special Event Security Guard - Holiday Time | 40                     | \$ 19.50    | 37.2%    | \$ 26.75      |

| Item No. | Description                                   | Estimated Annual Hours | Daily Rate | Weekly Rate |
|----------|-----------------------------------------------|------------------------|------------|-------------|
| 11       | Golf Cart Rental for Special Events as needed | 150                    | \$ 16.06   | \$ 112.40   |

| Item No. | Description             | Estimated Number of Officers | Price Per Unit / Per Week |
|----------|-------------------------|------------------------------|---------------------------|
| 12       | Body Camera per Officer | 14                           | \$ 10.80                  |

- Bill rates not inclusive of sales tax, per solicitation Attachment A request.
- Overtime requests with less than 48 hours' notice to be billed at the overtime rate.
- Holiday hours worked billed at the holiday rate.
- If requested, each HELIAUS unit will be direct billed at \$150/month.
- The rate provided herein reflects a year one rate. Pursuant to the Agreement, Contractor shall be afforded the ability to request an annual rate increase based on the increase in the PPI, provided substantiating documentation is presented to City in a timely manner. Said increase shall not be unreasonably withheld.

**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 non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor's personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction with a value of \$100,000 or more, then, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of goods and services from Israel.

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

- a. Except as set forth in Subsection (c) below, 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.
- c. Anything to the contrary notwithstanding, Contractor's fees and charges do not include any sales, use, excise or similar taxes, levies or duties ("Sales Taxes"). City is responsible for paying for all such Sales Taxes in respect of Contractor's services or in respect of amounts payable by City hereunder. If Contractor has the legal obligation to pay or collect Sales Taxes for which City is responsible under this section, the appropriate amount shall be promptly paid by City to Contractor unless City provides Contractor with either a valid and current tax exemption certificate or direct pay certificate, authorized by the appropriate taxing authority.

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 guard, 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; 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.
  - d. **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.
  - e. **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:
- b. 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.
  - c. 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.
- d. 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.
- e. 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 and Contractor each reserve the reciprocal right to terminate this Agreement, in part or in whole, for convenience upon one hundred and twenty (120) calendar days' written notice to the other party. 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. 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 to the extent caused by: (i) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (ii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement.

- 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.
  - c. Anything to the contrary notwithstanding, under no circumstances will either party be liable to the other party for consequential, incidental, indirect or punitive damages, or for lost profits.
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 guard or employee of the City from representing another person (including Contractor) before the City on any matter for which the guard 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 guards 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 Guard 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, that in the event that delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task either party may terminate the Agreement upon written notice to the other party.
38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

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

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing

board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

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

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

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

**EXHIBIT D  
SPECIAL TERMS AND CONDITIONS**

1. **EMPLOYEES OF CONTRACTOR; INDEMNIFICATION AND HOLD HARMLESS.** All Security Guards assigned to work under this Agreement must be employees of the Contractor at the time of any work assignment to the City. All employees assigned to the City under this Agreement will be employees of the Contractor for all purposes and not employees of City. No joint-employment or common law employer-employee relationship is intended or created by this Agreement. Under no circumstances shall the City be considered the legal employer of any Security Guard placed with City by the Contractor. The Contractor will be responsible for recruiting, interviewing, hiring, screening, assigning, re-assigning, and terminating the employment of the assigned employees. The Contractor will retain the ultimate right to supervise, control, and discipline the assigned Security Guards and to reassign Contractor's employee(s) to work for other projects, clients, or customers. The Contractor will take appropriate action to address in a timely manner any performance or conduct problems identified by the City relating to the assigned Guards through disciplinary action, performance counseling, additional training, or replacement. The Contractor will have sole authority to terminate the employment of Contractor's employee(s) assigned to the City under this Agreement. The City reserves the right to stop using the services of Contractor's employee at any time and for any reason, including but not limited to the Security Guard's performance, conduct, or qualifications. The City may or may not request that Contractor provide a replacement. If any of Contractor's employees assigned to the City asserts a claim against the City for wages, employee benefits, unemployment benefits, or any other protections or rights afforded to employees under federal, state or local law, or if any federal or state agency or court makes a determination that the City is the common law employer of any of Contractor's employees assigned to the City as Security Guards, Contractor will indemnify and hold harmless the City for all such claims and any resulting or related damages, penalties, assessments, fees, attorney's fees and/or costs.
2. **PRE-EMPLOYMENT REQUIREMENTS.** The Contractor will comply with all pre-employment requirements. The Contractor will be responsible for complying with all federal and state laws, rules and regulations relating to employment of Contractor's employee(s) providing services to the City. The Contractor will verify the eligibility of all Contractor's employee(s) to work lawfully in the United States, as a Security Guard for the City, and in accordance with all applicable state and federal laws, including those relating to the employment of aliens (e.g. 8 C.F.R. § 274a.2.). The Contractor will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in ARS §23-214(A).
3. **EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER.** The City is an equal opportunity employer and, therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, sexual orientation, gender identity, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful or contrary to City policy. Contractor agrees that it is an equal opportunity employer and that it does and will refrain unlawful discrimination.
4. **AMERICANS WITH DISABILITIES ACT (ADA).** As employer of the assigned Security Guards, the Contractor will be responsible for complying with the requirements of the ADA as it applies to the assigned employees and shall reimburse the City for the cost of any reasonable accommodation provided by the City for such employee of the Contractor.
5. **FAMILY AND MEDICAL LEAVE ACT (FMLA).** As the employer of the Security Guards assigned to the City, the Contractor will administer all aspects of the FMLA as it relates to their employees.
6. **HEALTH CARE BENEFITS.** The Contractor will be solely responsible for compliance with the Patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA") and any

amendments. The Contractor is solely responsible for providing health care benefits for its employees who provide services to the City as required by state or federal law. The Contractor shall comply with any and all requirements put in place by federal Health Care Reform. The Contractor will indemnify and hold harmless the City of Mesa from any and all ACA penalties, fees and/or assessments in the event any are imposed on the City for Contractor's failure to comply with the ACA as to its employees.

7. **BACKGROUND CHECK.** The Contractor will be required to perform a web-based criminal background check that complies with the City's background check policies and guidelines on all workers to be assigned to the City. *The cost of these background checks will be at the sole expense of the Contractor.* The Contractor will not assign any Security Guard to the City who has not passed the background check. The City may also perform fingerprint background checks on any Security Guard it deems appropriate based on assignment. Prior to a Security Guard beginning an assignment, the Contractor shall provide the City with an affidavit attesting that the required background and driver history checks and all required drug tests have been performed, and that the Security Guard assigned to the City passes all tests under the City's standards.
8. **FINGERPRINTING.** The Contractor and/or the City may conduct criminal and driver history background checks of Contractor's employees or agents who would physically perform services, and/or who will have access to the City's information, data, and/or facilities. Contractors employees providing services to the City over the age of eighteen (18) who would be in contact with minors, disabled, or the homebound may be required to fill out a consent form, submit to fingerprinting and successfully complete a full state and federal criminal background investigation as directed by the City, at the City's expense. The City shall receive the results of the background investigation, evaluate it and advise the Contractor whether or not specific employees are qualified to engage in or continue providing City services. The City reserves the right to perform fingerprint background checks on any employee it deems appropriate based on the assignment.
9. **DRUG TESTING.** For safety sensitive positions, the Contractor will be required to perform pre-assignment non-Department of Transportation drug testing to ensure that Contractors employee(s) provided to the City are, and remain, drug free and comply with the Agency's Alcohol and Drug Free Workplace policy. The cost of this drug testing will be at the sole expense of the Contractor. Prior to assignment, the Contractor will certify in an affidavit to the HR Coordinator that the Contractor's employee has successfully passed the drug testing.
10. **REASONABLE SUSPICION SUBSTANCE ABUSE TESTING.** If the City has reasonable suspicion to believe a Security Guard assigned to the City has consumed and/or used any alcohol, drugs or illegal controlled substances while performing work for the City under this Agreement, or is under the influence of or impaired by alcohol, drugs or any controlled substance, including prescription medication, over-the-counter medication or a controlled substance authorized for use by the state of Arizona, the City will notify the Contractor and reserves the right to immediately remove the Security Guard from the City's premises and discontinue the worker's services.
11. **ARIZONA STATE RETIREMENT SYSTEM (ASRS) CHECK.** As of July 1, 2012, SB 1609 required all Arizona State Retirement System (ASRS) employers to remit alternate contributions for each ASRS retiree who returned to work in any capacity in a position that would be considered an employee position of the ASRS employer. Regardless of whether the retiree works one hour per day or forty hours per week, the Alternate Contribution Rate (ACR) applies. The City is an ASRS employer. Therefore, the Contractor will be required to supply to the City the newly assigned Security Guard's name, job title, date of birth and Social security number for those placed at the City to check the ASRS website to determine retiree status. The City will notify the Contractor if the Security Guard is an ASRS retiree or not. If the Security Guard is an ASRS retiree, the Contractor will report to the City on a biweekly basis the compensation, gross salary, or contract fee of the ASRS retiree per A.R.S. §38-766.02. The Contractor will notify the Security Guard of this requirement.

The Contractor will provide a listing of new Contractors employee(s) assigned to the City including Employee Name, SSN, and DOB to the HR Coordinator to check in the ASRS database to determine ASRS retiree status. The HR Coordinator will report retiree status to the agency for each submission.

The Contractor will provide a timecard to the ASRS retiree that will include the information needed for the City reporting to the ASRS.

12. **COMPENSATION.** The Contractor will be solely responsible for compensating Contractors employee(s) assigned to the City, including but not limited to, providing any benefits to their employees as required by law. The Contractor will be responsible for implementing all income tax withholding and reporting requirements under federal, state, and/or municipal law. The Contractor agrees that its employees assigned to provide work to the City are employees of Contractor and not the City. If any taxing authority disputes this fact, Contractor will indemnify the City for any tax liability, interest and penalties. Any tax liability, interest, and/or penalties are Contractor's sole responsibility.

The Contractor shall be responsible for all accounting and payroll functions in connection with the services it provides, including preparing and maintaining records of deductions and state and federal taxes, W-2's, etc. The City disclaims any responsibility for payment of any benefits, taxes, insurance or any other compensation other than the amount(s) stated within this RFP.

The Contractor is further responsible for maintaining adequate workers compensation coverage as required by law. The City will not compensate Contractors employee(s) directly for their services. The City will not provide benefits of any kind (including, but not limited to, disability, unemployment, retirement, affordable health care insurance, workers compensation insurance or other benefits) to Contractors employee(s) assigned to the City by the Contractor. If any Contractor's employee assigned to the City as a Security Guard asserts a claim against the City for wages, employment benefits, unemployment benefits or any other protections or rights afforded to employees under federal, state or local law, or if any state or federal agency or court makes a determination that the City is the common-law employer of any of Contractor's employees assigned to the City as a Security Guard, Contractor shall indemnify and hold harmless the City for all such claims and any resulting or related damages, penalties, assessments, fees, attorneys' fees and/or costs.

- 12.1 **FLSA AND AZ WORKER COMPENSATION LAW.** The Contractor shall agree to compensate its employees in accordance with Fair Labor Standards Act and the Arizona Worker Compensation Law.
- 12.2 **TIMECARDS, INVOICING, REPORTING AND RECORDS.** The Contractor will be required to comply with all invoicing and reporting requirements in a timely manner as specified by this Agreement. The City will pay the Contractor within thirty (30) days after receipt of a proper invoice.
- 12.3 **TIMECARDS.** The Contractor must provide a way to report time worked. Each agency worker providing services shall maintain time records on a daily basis and, at the end of each weekly or biweekly time period, the hours of work shall be submitted for approval by the City. These time records shall serve as the basis for the Contractor's billing. Time Cards should be able to be submitted via fax, email, drop off, or portal.
13. **FORMER CITY EMPLOYEE.** If a proposed Security Guard is a former City of Mesa employee, the HR Coordinator must be notified to determine the former City employee's eligibility for placement.
14. **TRANSITION BETWEEN CONTRACTORS.** If the Contractor's Agreement is not renewed, or the Contractor is not awarded a new Agreement at the end of the contract term, the Contractor shall continue to perform in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

15. **INFORMATION SECURITY.** The Contractor must have established and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that no information contained in the City's records or obtained from the City or from others in carrying out the City's functions under a contract resulting from this Agreement shall be used by or disclosed by Contractor, its agents, guards, employees, including Security Guards assigned to the City, except as required to efficiently perform duties under the contract. Any security failure or breach of Contractor computer systems or databases shall be immediately reported to the City.
16. **PUBLIC RECORDS.** By providing services under this Agreement, the Contractor understands that information regarding the Agreement or individual Contractors employee(s) may be required to be disclosed by the City if a public records request is made pursuant to Arizona Revised Statutes Sections 39-121 et seq.
17. **RULES AND POLICIES.** Contractors employee(s) should be treated in accordance with City values and are expected to comply with all City policies which apply to guests on City premises (examples: smoking, alcohol and drug use, weapons in City buildings, and workplace violence). The City reserves the right to discontinue the services of any Security Guard for any actions by the Security Guard which would be deemed a violation of the City's rules or policies if the Security Guard were an employee of the City.
  - 17.1 **Workplace Harassment and Discrimination.** The City does not tolerate harassment or discriminatory behavior toward any individual, including Contractors employee(s), based on that individual's race, color, religion, age, disability, national origin, sex, sexual orientation or any other protected basis. Complaints asserted by Contractors employee(s) relating to harassment, discrimination or retaliation will be communicated to the Contractor representative who will notify the HR Coordinator for appropriate action and/or investigation. The City will promptly notify the Contractor of any complaints against Contractors employee(s) and the results of the City's investigation. The City reserves the right to discontinue the services of any Security Guard found to have engaged in harassment, discrimination or retaliation.
  - 17.2 **Oversight.** Contractor's employee(s) will be expected to be professional and comply with all federal, state, and local laws at all times in performing services for the City. Performance, discipline, and other employment related issues will be referred to the Contractor for resolution. The City reserves the right to discontinue the services of any worker that exhibits unprofessional conduct or violates any federal, state or local law.
18. **TRAINING.** Contractor's employees are not eligible for City sponsored training to improve their skillset. Contractors employees assigned to the City will not be permitted to take City training courses offered by the Human Resources Department's Personnel Training Unit or the Information Technology Department, except to the extent required to perform the assignment. Contractor's employees may be required to take Safety Services courses. Training will be required for driving assignments. If Contractors employee is required to attend any training provided by the City, Contractors employees will be compensated at the rate designated by the worker's job description while attending the training.
19. **CITY PROPERTY.**
  - 19.1 **Equipment.** Equipment provided by the City necessary for Contractors employee to perform his or her work assignment shall not be removed from the work site at any time.
  - 19.2 **Identification Card.** Contractor's employee will be issued an identification card and, when necessary with department approval, a building access card that identifies the Contractors employee as such and allows entry into the designated facility (ies) during authorized hours. Contractor's employee will be required to wear the identification badge at all times while providing services for the City with the photo and name visible. The identification card and/or building access card shall not be loaned to any other person. The identification

card shall not be altered in any manner, including attachment of pins or stickers to the surface. Lost identification cards shall be reported immediately to the Municipal Security Office.

- 19.3 **Uniforms.** Contractors employees will be expected to report for duty in acceptable Contractor provided uniform with any specified safety or protective gear required, such as gloves, safety shoes, safety glasses, etc., and wearing the City provided identification badge. Safety shoes will not be provided as equipment. The City will not provide clothing for Contractors employee unless business necessity requires otherwise. All required clothing and footwear worn by Contractors employees shall meet the requirements of the Occupational Safety and Health Act (OSHA) and/or the City.
20. **PARKING.** Contractors employees will park in designated locations as specified by the City when reporting for duty.

**EXHIBIT E  
FEDERAL CERTIFICATIONS**

**ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT**

**TO WHOM IT MAY CONCERN:**

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

**DEFINITIONS**

**Contract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

**Contractor** means an entity that receives a contract as defined in Contract.

**Cooperative agreement** means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;
- (b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.
- (c) The term does not include:
  - (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
  - (2) An agreement that provides only:
    - (i) Direct United States Government cash assistance to an individual;
    - (ii) A subsidy;
    - (iii) A loan;
    - (iv) A loan guarantee; or
    - (v) Insurance.

**Federal awarding agency** means the Federal agency that provides a Federal award directly to a non-Federal entity.

**Federal award** has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
- (c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).
- (d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

**Non-Federal entity** means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

**Nonprofit organization** means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and
- (c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

**Obligations** means, when used in connection with a non-Federal entity's utilization of funds under a Federal award, orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

**Pass-through entity** means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

**Recipient** means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

**Simplified acquisition threshold** means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

**Subaward** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

**Termination** means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

The following certifications and provisions may be required and apply when City of Mesa expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the City of Mesa and the City of Mesa's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

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#### **APPENDIX II TO 2 CFR PART 200**

**(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when a City of Mesa expends federal funds, the City of Mesa reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES \_\_\_\_\_ <sup>SS</sup> Initials of Authorized Representative of offeror

**(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

Pursuant to Federal Rule (B) above, when a City of Mesa expends federal funds, the City of Mesa reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract.

Does offeror agree? YES \_\_\_\_\_ <sup>SS</sup> Initials of Authorized Representative of offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a City of Mesa expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES \_\_\_\_\_ SS Initials of Authorized Representative of offeror

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when a City of Mesa expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES \_\_\_\_\_ SS Initials of Authorized Representative of offeror

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3706). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when a City of Mesa expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by City of Mesa resulting from this procurement process.

Does offeror agree? YES \_\_\_\_\_ SS Initials of Authorized Representative of offeror

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations

issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by City of Mesa, the offeror certifies that during the term of an award for all contracts by City of Mesa resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES \_\_\_\_\_ SS \_\_\_\_\_ Initials of Authorized Representative of offeror

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

Pursuant to Federal Rule (G) above, when federal funds are expended by City of Mesa, the offeror certifies that during the term of an award for all contracts by City of Mesa member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES \_\_\_\_\_ SS \_\_\_\_\_ Initials of Authorized Representative of offeror

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the Executive Office of the President Office of Management and Budget (OMB) guidelines at 2 CFR 180 that Implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by City of Mesa, the offeror certifies that during the term of an award for all contracts by City of Mesa resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the City of Mesa.

Does offeror agree? YES \_\_\_\_\_ SS \_\_\_\_\_ Initials of Authorized Representative of offeror

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by City of Mesa, the offeror certifies that during the term and after the awarded term of an award for all contracts by City of Mesa resulting from this procurement process, the offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

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**RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS**

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When federal funds are expended by City of Mesa for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

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**CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

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When City of Mesa expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

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**CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

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To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any City of Mesa upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

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**CERTIFICATION OF ACCESS TO RECORDS - 2 C.F.R. § 200.336**

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Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

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**CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS**

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Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES \_\_\_\_\_

SS

Initials of Authorized Representative of offeror

Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Offeror's Name:

Allied Universal Security Services

Address, City, State, and Zip Code:

775 S Pointe Parkway West, Suite #290 Phoenix, AZ 85044

Phone Number: 480-464-4688

Fax Number: 480-464-4659

Printed Name and Title of Authorized

Representative: Stephanie Switz

Email Address:

stephanie.switz@aus.com

Signature of Authorized Representative: Stephanie Switz

Date: 3/23/21

