

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HARRINGTON INDUSTRIAL PLASTICS, LLC**

THIS LINKING AGREEMENT (this “Agreement”) is entered into as of this _____ day of _____, 2023, between the City of Glendale, an Arizona municipal corporation (the “City”), and Harrington Industrial Plastics, LLC, a(n) Delaware limited liability company authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On September 1, 2022 under S.A.V.E Cooperative Purchasing Agreement, the City of Mesa entered into a contract with Contractor to purchase the goods and services described in the CPVC and PVC Fittings, Pipe, Valves, Related and Non-Related Products, Contract No. 2022228 (“Cooperative Purchasing Agreement”), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City’s Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City’s utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was September 1, 2022, until the date the contract expires on August 31, 2025 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond August 31, 2027. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until August 31, 2025. The

City may renew the term of this Agreement for up to a maximum of (2) two years, until the Cooperative Purchasing Agreement expires on August 21, 2027. Glendale renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed Two hundred thousand dollars (\$200,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Julie Ossege
7070 West Northern Avenue
Glendale, AZ 85303
And

Harrington Industrial Plastics
c/o Tony Harlan
4100 South 38th Street
Phoenix, AZ 85040

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

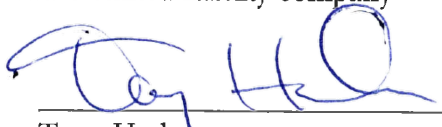
“City”

City of Glendale, an Arizona
municipal corporation

By: _____
Kevin R. Phelps
City Manager

“Contractor”

Harrington Industrial Plastics, LLC,
a Delaware limited liability company

By: 
Name: Tony Harlan
Title: Regional Sales Manager

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HARRINGTON INDUSTRIAL PLASTICS, LLC**

EXHIBIT A

City of Mesa Contract No. 2022228-CPVC and PVC Fittings, Pipe, Valves, Related and Non-Related Products



AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA AGREEMENT NUMBER 2022228

CPVC AND PVC FITTINGS, PIPE, VALVES, RELATED AND NON-RELATED PRODUCTS

CITY OF MESA, Arizona ("City")

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

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

AND

HARRINGTON INDUSTRIAL PLASTICS, ("Contractor")

Mailing Address	4100 South 38th Street, Suite 140 Phoenix, AZ 85040
Remit to Address	104480 Yorba Avenue Chino, CA 91710
Attention	Tony Harlan
E-Mail	tharlan@hipco.com
Phone	602-252-7616

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to Solicitation ("Agreement") is entered into this 1st day of September, 2022, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Harrington Industrial Plastics, a(n) CA corporation/company/natural person ("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 **2022228** ("Solicitation") for **CPVC AND PVC FITTINGS, PIPE, VALVES, AND RELATED AND NON-RELATED PRODUCTS**, 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 **September 1, 2022 and ending on August 31, 2025**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
 - 1.3 **Delivery**. Delivery shall be made to the location(s) contained in the Scope of Work within thirty (30) days after receipt of an order.
2. **Scope of Work**. The Contractor will provide the necessary staff, services, and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the Scope of Work, the Parties acknowledge and agree that the Contractor shall perform in accordance with all terms, conditions, specifications, and other requirements set forth within the Solicitation and Response unless modified herein.
3. **Orders**. Orders are placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

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

5. **Payment.**

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

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

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

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

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

Every ninety (90) to one-hundred and twenty (120) day period, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>) or current market conditions such as, but not limited to supply chain raw materials and product availability, trucking, etc. The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

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

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

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

6. **Insurance.**

- 6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.
- 6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.
- 6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
- 6.4 Each insurance policy required under the Agreement must be in effect at or before the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Before the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no

policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.

6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.

6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.

6.9.2 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 Products and Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials, or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.

6.9.3 Automobile liability, bodily injury, and property damage with a limit of \$1 million per occurrence including owned, hired, and non-owned autos.

7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after the receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.

8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth in the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.

9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:

- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
- b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
- c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
- d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.

10. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein.

In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.

11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:

- (A) Scope of Work / Technical Specifications
- (B) Pricing
- (C) Mesa Standard Terms and Conditions

13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation-related costs and fees from the other Party.


14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.

15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

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

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

CITY OF MESA, ARIZONA

By:  Digitally signed by Edward Quedens
DN: cn=Edward Quedens, o=City of
Mesa, Arizona, ou=Business Services,
email=ed.quedens@mesaz.gov,
c=US
Date: 2022.10.10 11:08:46 -07'00'
Adobe Acrobat version:
2022.002.20212

Printed Name

Title

Date

CONTRACTOR NAME

By: Harrington

Tony Harlan

Printed Name

Regional Sales Manager

Title

09/14/2022

Date

REVIEWED BY:

By: 

Ted Stallings, CPPB
Procurement Officer II

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HARRINGTON INDUSTRIAL PLASTICS, LLC**

EXHIBIT B
Scope of Work

PROJECT

Contractor will provide PVC, CPVC Pipes, Valves, Fittings, related and non-related products per the attached City of Mesa Contract No. 2022228.

EXHIBIT A SCOPE OF WORK

1. **SCOPE OF WORK:** For the purchase of CPVC and PVC fittings, pipe, valves, and other water and wastewater related products for the City of Mesa.

The term of any resulting contract shall be for three (3) years with an opportunity to renew for an additional two (2) years as provided for within the Scope of Work and Terms and Conditions sections of this Request for Bid (RFB). Renewal options are based on contractor(s) performance, service, ability to provide high quality-products(s), and demonstrate cost containment efforts.

2. **BRAND NAME ONLY:** The City has established a brand name-only specification for the items listed within this solicitation. Due to product standardization, the City requires that only the brand name(s) listed will be offered for this procurement.

3. **PRODUCT SPECIFICATIONS:**

- a. All products supplied by the Contractor shall be new and unused.
- b. Where applicable products bid must meet current AWWA, NFP, and ANSI standards
- c. CPVC Piping Specifications:
 - i. All CPVC Schedule 40 and schedule 80 pipe shall be manufactured from a Type IV, Grade I Chlorinated Polyvinyl Chloride (CPVC) compound with a Cell Classification of 23447 per ASTM D1784.
 - ii. Fitting and pipes shall be manufactured in strict compliance to ASTM F441, consistently meeting the Quality Assurance test requirements of this standard with regard to material, workmanship, burst pressure, flattening, and extrusion quality.
 - iii. Fittings and pipes shall be produced in the USA using domestic materials, by an ISO 9001 certified manufacturer, and shall be stored indoors after production, at the manufacturing site, until shipped from the factory.
 - iv. Fittings and pipes shall carry the National Sanitation Foundation (NSF) seal of approval for potable water applications.
- d. Fluorinated Ethylene Propylene (FEP) Tubing Specifications:
 - i. Tubing size and wall thickness (3/4" OD x 5/8" ID x .159 FEP Tubing)
 - ii. Clear Tubing
 - iii. Continuous length
- e. Name Brand
 - i. When referenced on the price sheet, the City will only accept the brand names referenced.
- f. The following representation of manufacturers and products that may be purchased from resulting contract:
 - i. Spears or Equal CPVC Schedule 80, Fittings
 - ii. Spears or Equal CPVC Schedule 80, Union 2000 Socket x Socket w/EPDM O-rings
 - iii. CPVC Schedule 80, 20 Foot Sections of Pipe
 - iv. Clear PVC Schedule 80 Pipe 20 Foot Sections
 - v. ASAHI TYPE-21/21A True Union Ball Valve, CPVC/EPDM
 - vi. ASAHI TYPE-14/15 Diaphragm Valve, Flanged, CPVC/ Three Layer Diaphragm PTFE/PVDF/EPDM
 - vii. ASAHI CPVC True Union Ball Check Valve, EPDM Seals, Union w/Socket Ends
 - viii. IPEX RV Sediment Strainers (CPVC Body w Union Socket End Connections & FPM Seals
 - ix. IPEX RV Sediment Strainers (PVC Body w ANSI Flanged End Connections & EPDM O-rings
 - x. Hayward YS Series Y-Strainers (CPVC Body w ANSI Flanged End Connections & EPDM O-rings

- xi. Hayward YS Series Y-Strainers (CPVC Body w Socket End Connections & EPDM O-rings)
- xii. Hayward YS Series Y-Strainers (CPVC Body w Threaded End Connections & EPDM O-rings)
- xiii. Griffco Unibody Pressure Relief Valve CPVC (Connections: Union Socket)
- xiv. Griffco Unibody Back Pressure Valve CPVC (Connections: Union Socket)
- xv. PLAST-O-MATIC: Series DGV Thermoplastic Degassing Valve, CPVC
- xvi. SAINT-GOBAIN Grab Seal (TM) Compression PFA Fittings
- xvii. FEP Tubing, Min. Burst Pressure 250 PSI Min. Wall Thickness 159

4. **ORDER PLACEMENT:**

- a. The products ordered will be on an as-needed basis.
 - i. Order placement process.
 - 1. When needed the City will contact two (2) to three (3) contractors to provide quotes for the needed product.
 - 2. Contractors will provide quotes using manufacturers catalog/List Price minus percentage off proposed in their response to this RFP*.
 - 3. Contractor quote evaluation
 - a. City will evaluate quotes for cost, and delivery date to determine which Contractor quote is in the best interest of the based on the current need for the requested product.

*Failure to provide minimum percentage discount(s) may result in one of the following:

- a. Proposer may be found non-responsive and removed from the evaluation process.
- b. May limit the City's ability to purchase additional products other than those listed in the RFP price sheet.
- c. Other agencies may not be able to use resulting contracts.

5. **PACKING SLIPS:** Each shipment shall include a packing slip showing the City Order Number, Item number, description, contract price, and the quantity shipped. Safety Data Sheets, if applicable, must accompany all orders at the time of delivery.

6. **DELIVERY:** Delivery should be made within fifteen (15) to thirty (30) days after receipt of an order.

Contractor shall retain title and control of all goods until they are delivered and received. All risk of transportation and all related charges shall be the responsibility of the Contractor.

All claims for visible and concealed damage shall be filed by the Contractor. The City will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. **RETURNS:** The City reserves the right to return any unopened product(s) in its original package(s); to the contractor that supplied that product. Credit for returned products must be received within thirty (30) days unless prior arrangements for an extension have been agreed upon. Credits must be either a credit memo or check at the option of the City. The City shall not be charged any additional fees or penalties for products returned including but not limited to restocking fees - special order items are exempted from this requirement.

8. **DEFECTIVE PRODUCTS:** All defective products shall be replaced and exchanged by the contractor. The cost of transportation, inspection, re-shipping, or other like expenses shall be borne by the contractor. All replacement products must be received by the City within thirty (30) days of initial notification or as mutually agreed upon by the City and the Contractor.

9. **PRODUCT RECALL:** In the event of any recall notice, technical service bulletin, or other important notification affecting the equipment, parts and services purchased under this contract, a notice shall be sent to the Contract Administrator and Purchasing Office. Awarded contractor assumes full responsibility for prompt notification of both the contract administrator and purchasing, of any product recall in accordance with the applicable State of Arizona and federal regulation.
10. **WARRANTY:**
- a. All warranties transfer to the City.
 - b. All warranty items/issues/concerns shall be resolved at no charge to the City. This shall include, but not be limited to, parts, labor, freight, travel, etc.
 - c. All warranty issues/concerns shall be resolved within a time frame mutually determined by the City and Contractor.
11. **PROPOSAL QUESTIONNAIRE:** Proposal Questionnaire will be used to assist in determining Proposer responsiveness. The City is the sole judge as to determining responsiveness. If supporting documentation is required, Proposer shall provide the documentation in the sequence set forth in the Proposal Questionnaire.
12. **REQUEST FOR BID PRICE SHEET:**
- a. Proposals shall be submitted on the forms provided.
 - b. Unless otherwise stipulated by this Agreement or the City's order, all pricing shall be F.O.B. Destination with Freight Prepaid and Allowed ("F.O.B. Destination"), delivered to and unloaded at the destination(s) defined by the Delivery article of this Agreement or accepted Order for services or products and all freight cost shall be included in the offered Unit Price. Although State and City sales tax are paid when applicable and invoiced, taxes should not be included in the unit price of this Solicitation.
 - c. As it is not feasible to list every product needed in the City's day-to-day operation the Bid Price Sheet contains a shopping cart of products for the purposes of analysis only. Therefore, the City is requesting a Manufacturer's Catalog/List Price discount and. All items in the manufacturer price catalog(s) shall be available to the City at the discount(s) offered. The discount(s) off of the catalog/list shall remain fixed for the life of the initial contract period and renewal options. Unit price shall be the published price less the discount(s) offered.
 - d. **Bidders should not leave the discount section blank on the pricing sheet. A nominal value should be included anywhere from 0% to 100%. If different discounts would apply depending on the type of product or equipment, write/type "various" or provide a range in the space provided or include a list of different discounts offered.**
 - e. No fuel surcharges will be accepted.
13. **INVOICING/PAYMENT:**
- a. Invoices shall be emailed to:
 - i. Water Resources Department: WaterAcctsPayable@MesaAZ.gov for the fastest processing.
 - ii. Other City of Mesa Departments will provide additional email address(es) upon award of contract(s).
 - iii. Contractors shall not invoice for products/service items not shipped or performed, as this will delay payment of the entire invoice.
 - b. Invoices shall include the following:
 - i. delivery order (DO) #,
 - ii. part number(s),
 - iii. products/services descriptions,
 - iv. list price, percent discount,

- v. city cost (contract pricing),
 - vi. if applicable freight charge and sales tax.
- c. Contractor shall not invoice for items not delivered as this will delay payment of the entire invoice.
- d. Contractor shall e-mail invoices to the appropriate email address(es) above no later than five (5) to seven (7) calendar days after product/services is received by the City.
- e. Payment in full shall be made to the Contractor within thirty (30) days after receipt and approval of an invoice, unless terms other than net thirty (30) days are offered as a discount, at the City's sole discretion.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HARRINGTON INDUSTRIAL PLASTICS, LLC**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be compensated for PVC, CPVC (Pipe, Valves and Fittings) per the attached City of Mesa Contract No. 2022228.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$200,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The detailed compensation is outlined in the City of Mesa Contract No. 2022228, Exhibit B, Pricing.

**EXHIBIT B
PRICING**

Attachment A Pricing will be added here when Agreement is finalized.

Request for Proposal 2022228 Price Sheet

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish CPVC and PVC Fittings, Pipe, Valves, Related, and Non-Related Products to the City of Mesa at the price(s) stated below.
Pricing must be inclusive of all costs including, delivered to a City facility.

Group 1			
Item Number	Description	%Minimum Percentage Discount off List Price	Manufacturer Bid
1.	Spears: CPVC Schedule 80, Fittings	85.00%	Spears
2.	Clear PVC Schedule: 80 Pipe 20 foot Sections	45.00%	Georg Fischer
3.	ASAHI TYPE: 2 1/2" True Union Ball Valve, CPVC/EPDM	52.00%	ASAHI
4.	IPEX: RV Sediment Strainers (PVC Body w ANSI Flanged End Connections & EPDM O-rings	25.00%	IPEX
5.	Hayward: YS Series Y-Strainers (CPVC Body w ANSI Flanged End Connections & EPDM O-rings	25.00%	Hayward
6.	Griffee: Unibody-Back-Pressure-Valve-CPVC (Connections: Union-Socket) Options: Spring 0-50, EPDM-Diaphragm & O-Rings	42.00%	Griffee
7.	PLAST-O-MATIC: Series DGV Thermoplastic-Degassing Valve, CPVC	40.00%	Plast-O-Matic
8.	SAINT-GOBAIN-Grab Seal (TM) Compression PFA Fittings	20.00%	Saint-Gobain

Group 2		
Item Number	Description	Percentage Discount off List Price
	Spears or Equal	
1.	• CPVC Schedule 80, Fittings	69.00% to 85.00%
2.	• CPVC Schedule 80, Union 2000 Socket x Socket w/EPDM O-rings	69.00% to 0.00%

3.	CPVC Schedule 80, 20-Foot Sections of Pipe	10.00% to 30.00%
4.	Clear PVC Schedule 80 Pipe 20-foot Sections	0.00%
	ASAHI	52.00%
5.	<ul style="list-style-type: none"> TYPE-21/21A True Union Ball Valve, CPVC/EPDM 	
6.	<ul style="list-style-type: none"> TYPE-14/15 Diaphragm Valve, Flanged, CPVC/ Three Layer Diaphragm PTFE/PVDF/EPDM 	
7.	<ul style="list-style-type: none"> CPVC True Union Ball Check Valve, EPDM Seals, Union w/Socket Ends 	
	IPEX	25.00%
8.	<ul style="list-style-type: none"> RV Sediment Strainers (CPVC Body w Union Socket End Connections & FPM Seals 	
9.	<ul style="list-style-type: none"> RV Sediment Strainers (PVC Body w ANSI Flanged End Connections & EPDM O-rings 	
	Hayward	25.00%
10.	<ul style="list-style-type: none"> YS Series Y-Strainers (CPVC Body w ANSI Flanged End Connections & EPDM O-rings 	
11.	<ul style="list-style-type: none"> YS Series Y-Strainers (CPVC Body w Socket End Connections & EPDM O-rings 	
12.	<ul style="list-style-type: none"> YS Series Y-Strainers (CPVC Body w Threaded End Connections & EPDM O-rings 	
	Griffco	12.00%
13.	<ul style="list-style-type: none"> Unibody Pressure Relief Valve CPVC (Connections: Union Socket) Options: Spring 0-50, EPDM Diaphragm & O-Rings 	
14.	<ul style="list-style-type: none"> Unibody Back Pressure Valve CPVC (Connections: Union Socket) Options: Spring 0-50, EPDM Diaphragm & O-Rings 	

	PLAST-O-MATIC		10.00%
15.	<ul style="list-style-type: none"> Series DGV Thermoplastic Degassing Valve, CPVC 		
	SAINT-GOBAIN		20.00%
16.	<ul style="list-style-type: none"> Grab Seal (TM) Compression PFA Fittings 		
	FEP Tubing		0.00%
17.	<ul style="list-style-type: none"> Min. Burst Pressure 250 PSI Min. Wall Thickness .159 		

Group 18 - Line Card Discounts			
<p>As it is not feasible to list every product needed in the City's day-to-day operation the Proposal Price Sheet contains a shopping cart of products for the purposes of analysis. Therefore, the City is requesting a Catalog/List Price discount for additional items and services not specifically listed on the Proposal Price Sheet to successfully obtain a full line of equipment, parts, supplies and services. All items in the manufacturer price catalog(s) shall be available to the City at the discount(s) offered. The discount(s) off of catalog/list should remain fixed for the life of the initial contract period and renewal options. Unit price shall be the published price less the discount(s) offered. Proposers should not leave the discount section blank on the pricing sheet. A nominal value should be included anywhere from 0% to 100%. If different discounts would apply depending on the type of product or equipment, right "various" in the space provided and include a list of different discounts offered.</p>			
	Other related and non-Related Products	Manufacturer(s)	Minimum Discount(s)
18.1	Pump	Finish T	0.00
			Manufacturers Price List Used

EXHIBIT 1
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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 the 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,

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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. 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

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illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due to 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 processes.
 - 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 methods that tracks the 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 City offices, as determined by the City.
14. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from the performance of services under this Agreement.
16. **DEFAULT.**
 - a. A party will be in default of the Agreement if that party:

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- 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 an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and Solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety, or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give written assurance of its intent and ability to perform. In the event, demand is made, and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services or materials required under the Agreement from the open market, complete the required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.

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

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- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workmanlike 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 represents the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement, and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City's real or personal property when such property is the responsibility of or in the custody of Contractor or its personnel.

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

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

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

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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, the receipt will be deemed effective upon delivery. If sent via certified or registered mail, the receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, the 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, supersedes 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 before the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract, or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.
47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to 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

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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 the City are subcontracted to third parties.