



**AGREEMENT PURSUANT TO SOLICITATION**

**CITY OF MESA AGREEMENT 2023129  
PAVEMENT MARKING MATERIALS AND TRAFFIC PAINT**

**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	Brandy Andersen, MPA, NIGP-CPP, CPPO, CPPB Procurement Supervisor
E-Mail	<a href="mailto:Brandy.Andersen@MesaAZ.gov">Brandy.Andersen@MesaAZ.gov</a>
Telephone	(480) 644-6426

With a copy to: City of Mesa – Transportation  
Attn: Joshua Wolfgramm, Traffic Operations Supervisor  
P.O. Box 1466  
Mesa, AZ 85211-1466  
[Joshua.Wolfgramm@MesaAZ.gov](mailto:Joshua.Wolfgramm@MesaAZ.gov)

**AND**

**ENNIS-FLINT, INC., (“Contractor”)**

Mailing Address	4161 Piedmont Pkwy, Suite 370 Greensboro, NC 27410
Remit to Address	PO Box 603518 Charlotte, NC 28260-3518
Attention	Randy Cary, Regional Sales Manager
E-Mail	<a href="mailto:rcary@ppg.com">rcary@ppg.com</a>
Telephone	480-466-2919
Facsimile	336-218-6746

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to Solicitation ("Agreement") is entered into this 13<sup>th</sup> day of February, 2023, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Ennis-Flint, Inc., a Texas 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 **2023129** ("Solicitation") for **PAVEMENT MARKING MATERIALS AND TRAFFIC PAINT**, 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 **February 13, 2023** and ending on **February 12, 2026**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
  - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
  - 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.

During the sixty (60) day period before 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 Special purpose coatings, including all marine coatings and traffic marking paints #32551032551072**, 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; and
  - j. 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:
- o (A) Scope of Work
  - o (B) Pricing
  - o (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.


**RESPONDENT CERTIFICATION**

**By submitting the Response and signing this Certification, the Respondent understands and certifies to all of the following:**

- a) The information provided in Respondent's Response is true and accurate to the best of Respondent's knowledge.
- b) Respondent is under no legal prohibition that would prevent Respondent from contracting with the City of Mesa.
- c) Respondent has read and understands the Solicitation packet as a whole (including attachments, exhibits, and referenced documents) and: (i) can attest that Respondent is in compliance with the requirements of the Solicitation packet, and (ii) is capable of fully carrying out the requirements of the Solicitation as set forth in Respondent's Response.
- d) To Respondent's knowledge, Respondent and Respondent's employees have no known, undisclosed conflicts of interest as defined by applicable law or City of Mesa Procurement Rules. If Respondent or Respondent employees have a known conflict of interest, Respondent has disclosed the conflict in its Response.
- e) Respondent did not engage in any anti-competitive practices related to its Response or the Solicitation. The prices offered by Respondent were independently developed without consultation or collusion with any other Respondents or potential Respondents.
- f) No gifts, payments or other consideration were made to any City employee, officer, elected official, agent, or consultant who has or may have a role in the procurement process for the services/materials covered by the Solicitation.
- g) Respondent grants the City of Mesa permission to copy all parts of its Response including, without limitation, any documents and materials copyrighted by Respondent: (i) for the City's use in evaluating the Response; and (ii) to be disclosed in response to a public records request under Arizona's public records law (A.R.S. § 39-121 et. seq.) or other applicable law, subpoena, or other judicial process provided such disclosure is in accordance with City of Mesa Procurement Rule 6.13.
- h) If a contract is awarded to Respondent as a result of the Response submitted to the Solicitation Respondent will:
  - i. Provide the materials or services specified in the Response in compliance with all applicable federal, state, and local statutes, rules and policies;
  - ii. Honor all elements of the Response submitted by Respondent to the City including, but not limited to, the price and the materials/services to be provided; and
  - iii. Enter into an agreement with the City based on the terms and conditions of the Solicitation and the Response, subject to any negotiated exceptions and terms.
- i) Respondent is current in all obligations due to the City including any amounts owed the City and any licenses/permits required for the general lawful conduct of business. Respondent shall acquire all licenses/permits necessary to lawfully conduct business specific to the Solicitation prior to the execution of a contract with the City pertaining to the Solicitation.
- j) The signatory of this Certification is an officer or duly authorized agent of Respondent with full power and authority to submit binding offers for the goods/services specified herein. Respondent intends by the submission of this Certification to be bound by the terms of the Certification, Solicitation, and Response, subject to any negotiated terms/exceptions.

**ACCEPTED AND AGREED TO BY RESPONDENT:**

Company Name: Ennis-Flint, Inc.

Signature: 

Printed Name: Dane Alsbrook

Title: Director of Contract Administration

Date: 12/7/22

**City Acceptance of Offer**

*The below document will be executed when Agreement is finalized and awarded.*

**ACCEPTANCE OF OFFER:**

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number 2023129.

Awarded this



Edward Quedens  
cn=Edward Quedens,  
o=City of Mesa, \_\_\_\_\_, 2023.  
ou=Business Services  
Director / City of Mesa,  
email=ed.quedens@mesaa  
z.gov, c=US  
2023.02.14 15:38:55 -07'00'

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

**REVIEWED BY:**

By: Brandy Andersen 1/26/2023  
Brandy Andersen, MPA, NIGP-CPP, CPPO, CPPB  
Procurement Supervisor

**EXHIBIT A  
SCOPE OF WORK**

1. **SCOPE OF WORK:** Contractor will provide pavement marking materials and traffic paint as specified herein for the following groups:

- **Group 1:** Preformed Thermoplastic Markings
- **Group 2:** Waterborne Traffic Paint

The City will place orders intermittently throughout the contract period for all groups. Quantities mentioned herein are approximate only and the City reserves the right to increase or decrease the amounts as circumstances may require. No guarantee is made to the exact quantities of items to be ordered. **Every attempt will be made to place orders in bulk to reduce shipping costs.**

Products offered must meet or exceed specifications as set forth in this bid.

The link for the American Society for Testing and Materials is provided for your reference:  
<http://www.astm.org/>

2. **ORDERING AND DELIVERY:** Materials will be ordered on an as needed basis by the City of Mesa Traffic Operations Striping Group.

- Any changes to an order must be made in writing.
- Oral instructions made by City employees regarding written instructions concerning drawings, colors or quantities shall not be binding. Contractor will rely solely and exclusively on the instructions contained in original orders, order updates and attached documents that have been emailed or faxed directly.

- 2.1 **Delivery Requirements:** All material will be palletized (as necessary) in a fashion so as to prevent damage in transit or storage to the finished units. Contractor will include updated Material Safety Data sheets with the shipped product(s).

- 2.1.1 Materials that are not received in good condition will be replaced by the Contractor at no additional cost to the City.
- 2.1.2 Deliveries will not exceed thirty (30) days after receipt of an order, or date of specific delivery request.
- 2.1.3 Delivery will only be accepted between the hours of 7:00 a.m. and 3:00 p.m., Monday through Thursday. Deliveries will not be accepted on City of Mesa observed holidays. Contractor will notify the City at (480) 644-4565 twenty-four (24) hours prior to an expected delivery. All items will be shipped FOB destination freight prepaid and allowed to the City. Deliveries will be made to:

City of Mesa Striping Shop  
6935 E. Decatur  
Mesa, AZ 85207

- 2.1.4 Shipping packages will be marked with the following information:
  - Contractor Name
  - Brand Name
  - Color
  - Part Number and Description
  - Date of Manufacture

3. **INVOICING INSTRUCTIONS:** Contractor is required to issue and deliver invoices and monthly statements. All invoices will include the following information to ensure prompt payment:
- a) Department Name (Transportation)
  - b) Department Number (F350)
  - c) A valid Purchasing Authorization Number (Master Agreement – MA, Delivery Order – DO, Purchase Order – PO, Service Contract – SC or Contract – CT)

All three (3) items above should be obtained from a City Representative when the order is placed.

A City employee signature accompanied by the Employee ID number is required on all delivery tickets/slips at City yards to ensure proper receipt of goods.

Failure to comply with the above may result in delayed payment or non-payment of deliveries if City staff cannot determine where the delivery was made.

Invoices will state the current retail price and contract price to be paid. Invoices can either be sent through postal mail or via email.

Invoices will be mailed to:

City of Mesa  
F350 – Transportation – MS2000  
PO Box 1466  
Mesa, AZ 85211-1466

Electronic invoices shall be emailed to:

[TransportationInvoices@MesaAZ.gov](mailto:TransportationInvoices@MesaAZ.gov)

4. **TERM:** This Solicitation is for awarding a firm, fixed price purchasing contract to cover a three (3) year term.
5. **RENEWALS:** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Renewal(s) will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
6. **EXTENSIONS:** Upon the expiration of the Term of the Agreement, including any renewals permitted herein, at the City's sole discretion the Agreement may be extended 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 under this Agreement. The City intends to notify the Contractor in writing of its desire to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
7. **PRICING:**
- a. **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.

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

During the sixty (60) day period before 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 Special purpose coatings, including all marine coatings and traffic marking paints #32551032551072**, 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.

- c. **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 6, 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.

8. **TYPES AND AMOUNTS OF INSURANCE:** Insurance requirements are detailed in the Agreement document. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

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

Before the execution of the Contract, the Contractor shall provide the City with a Certificate of Insurance (using appropriate ACORD certificate) SIGNED by the Issuer, applicable endorsements, and the City reserves the right to request additional copies of any or all of the above policies, endorsements, or notices relating thereto.

When the City requires a Certificate of Insurance to be furnished, the Contractor's insurance shall be primary of all other sources available. When the City is a certificate holder, the Contractor agrees that no policy shall expire, be canceled, or materially changed to affect the coverage

available without advance written notice to the City.

**“Waiver of Subrogation”.** The policies required by this agreement (or contract) shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, elected officials, officers, employees, and volunteers for any claims arising out of the work of Contractor.”

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

1. **TECHNICAL SPECIFICATIONS – GROUP 1: PREFORMED THERMOPLASTIC MARKINGS**

1.1 **Material Requirements:**

- 1.1.1 The preformed pavement markings must be a resilient white and yellow product with uniformly distributed glass beads throughout the entire cross-sectional area. Lines, legends, and symbols are to be capable of being affixed to asphalt and concrete pavements by the use of normal heat from a propane type of torch.
- 1.1.2 The markings must be capable of conforming to pavement contours, breaks, and faults through the action of traffic at normal pavement temperatures. The markings will have resealing characteristics, including the capability of fusing with itself and previously applied thermoplastic when heated with a torch.
- 1.1.3 The markings must be able to be applied with no minimum ambient or surface temperature requirements.
- 1.1.4 Materials must be composed of a modified ester rosin, aggregates, pigments, binders, and glass beads which have been factory produced as a finish product, which shall be designed to meet the requirements of the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) <http://mutcd.fhwa.dot.gov/>. The thermoplastic material will also conform to American Association of State Highway and Transportation Officials (AASHTO) <http://www.transportation.org>, designation M249 Specifications for White and Yellow Reflective Thermoplastic – Solid form, with the exception of the relevant differences for the material being supplied in a performed state.
- 1.1.5 New pavement markings will have a uniform adequate nighttime retro-reflectivity when installed. The pavement markings will have an average minimum retro-reflectivity of three hundred fifty (350) millicandelas for white and two hundred (200) millicandelas for yellow with an 88.76 degree entrance angle and a 1.05 degree observation angle.

1.2 **Graded Glass Beads:**

The material must contain a minimum of thirty (30) percent graded glass beads by weight and be uniformly distributed throughout the material. The beads will be clear and transparent and will not consist of more than twenty (20) percent of irregular fused spheroids, or silica. The index of refraction will not be less than 1.50. Test for roundness will conform to American Society for Testing and Materials, ASTM D-1155 Standard Test Method for Roundness of Glass Spheres requirements or latest revisions thereof. The material will be supplied with factory applied surface beads at a rate of one (1) pound per ten (10) square feet. The surface beads will have a minimum roundness of ninety (90%) percent and refractive index of 1.50.

1.3 **Pigments:**

- 1.3.1 White: Sufficient titanium dioxide pigment will be used to ensure a color equivalent to Federal Highway White, Docket No. FHWA-99-6190 Table 5 and Table 6 as revised and corrected. <http://mutcd.fhwa.dot.gov/kno-colorspec.htm>.
- 1.3.2 Yellow: Sufficient yellow pigment will be used to ensure a color equivalent to Federal Highway Yellow, Docket No. FHWA-99-6190 Table 5 and Table 6 as revised and corrected. The yellow and pigment must be of organic origin only and contain no lead chromate.

1.3.3 Other Colors: Must use organic pigments and be heavy metal free.

1.4 Skid Resistance:

The surface of the material must provide a minimum resistance value of forty-five (45) British Pendulum (Tester) Number (PBN) with properly applied and embedded surface beads when tested according to ASTM E-303 Standard Test Method for Measuring Surface Frictional Properties.

1.5 Dimensions:

1.5.1 The material must be supplied at a minimum thickness of ninety (90) mils or one hundred twenty-five (125) mils, as ordered. The thickness measurement will exclude the top surface beads.

1.5.2 The material must be as sized in the Federal Highway Administration (FHWA) <https://www.fhwa.dot.gov/>, Standard sizes as shown in the Manual on Uniform Traffic Control Devices (MUTCD).

1.6 Environmental Resistance:

The material must be designed for use in heavy traffic locations where maximum wear and tear is present and resistant to deterioration due to exposure to sunlight, water, oil, gasoline, salt or adverse weather conditions.

1.7 Application:

1.7.1 Asphalt: The materials will be applied using a propane torch method recommended by the manufacturer. The material must be able to be applied with no preheating of the pavement to a specific temperature. The pavement will be clean, dry and free of debris. Supplier must enclose application instructions with each box/ package shipped.

1.7.2 Portland Cement Concrete: The materials will be applied using the same procedure as stated above using a compatible primer sealer before material is installed to ensure proper adhesion. Compatible primer sealer will be available through the Contractor.

1.8 Warranty:

There will be a minimum two (2) year guarantee/non-prorated warranty on workmanship, material and durability under normal urban traffic conditions from date of delivery. Product will have a one (1) year shelf life with no degradation in performance from date of delivery.

1.9 Satisfactory Performance Life:

All supplied preformed, heat-fused thermoplastic material will be considered as providing satisfactory performance life if they do not deteriorate due to natural or environmental causes within their material warranty period as herein specified.

Unsatisfactory performance conditions will be cause for immediate material rejections and replacement at no cost to the City. Consistent unsatisfactory performance may be grounds for nonuse or cancellation of all or a portion of the contract. Unsatisfactory performance conditions include, but are not limited to, the display of the following:

- Bubbles, wrinkles, ripples, peeling, cracks or breaks on any portion of the applied material greater than 1" x 1" inches in dimension. This requirement does not apply regarding minor defects around edges or other imperfection in the material due to failure of the asphalt or concrete substrate.
- Any shrinkage
- Significant visible delamination from the substrate
- Significant discoloration, including clouding or chalking of the surface.
- Loss of nighttime retro-reflectivity as observed at night under headlights and/or objective measures as based on this specification and other nationally accepted standards and practices (including FHWA's minimum retro-reflective guidelines) will be used by the City to judge satisfactory performance

1. **TECHNICAL SPECIFICATIONS – GROUP 2: WATERBORNE TRAFFIC PAINT**

1.1 **Material Testing Submittals:**

Contractor may be required to submit, as requested, verified testing results of materials. At the City's request, Contractor may also be required to supply batch samples of materials to the City for the City to perform independent testing at its own expense. The City elects to perform independent testing; the Department or its representative may perform any or all of the following verification steps:

- Sample raw materials and finished paint in accordance with these specifications
- Test raw materials and finished paint in accordance
- Inspect the manufacturing process
- Take samples after the manufacturer makes final adjustments to the batch to establish or verify performance

In case of variance to Contractor supplied testing results, the City's tests will govern.

1.2 **Quality control and Production Procedures:** The producer is responsible for ensuring that the proposed raw materials and manufacturing procedure produce a product meeting the specification requirements. Contractor is required to maintain and may be required to submit evidence of the following plant-specific written quality control and production procedures to ensure product compliance with these specifications:

- Procedures for verification of raw material quality
- Batching procedures for ensuring mixing/batching operations are producing homogenous traffic paint in accordance with the material specification.
- Quality control procedures for verification of Departmental material requirements
- Procedures for handling material failing to meet specification requirements
- Procedures for handling, storage, and shipment of finished traffic paint
- List of designated on-site quality control personnel with copies of their qualifications and a detailed description of their quality control-related experience as related to the inspection duties listed above

1.3 **Documentation:** Contractor will maintain the following documentation, with a minimum of one (1) year retention, available upon request to the Department.

- All quality control data for the raw materials used in the manufacture of supplied traffic paint
- All quality control data for each batch produced
- Shipping invoices for delivery of City traffic paint

1.4. **Raw Materials:**

1.4.1 **Substitutions:**

The exact brands and types of raw materials used in the Standard are listed to facilitate the selection of materials equal in quality, composition, and physical and chemical behavior after aging in the finished product.

1.4.2 **Specifications:**

All materials required to meet federal, ASTM, or Department Specifications must meet the latest specifications in effect on the date of the Request for Bids.

1.4.3 Approved Pigments:

- Titanium Dioxide—ASTM D 476, Type II V, VI, VII
- Yellow Pigment—As specified in Table 1
- Calcium Carbonate—ASTM D 1199, Type GC, Grade I, with minimum 95% CaCO<sub>3</sub>
- Type PC, minimum 98% CaCO<sub>3</sub>

**Table 1**  
**Yellow Pigment Requirements**

<b>Yellow Pigment CI 65 (Reddish Yellow)</b>	
Specific Gravity	1.40 to 1.76
Oil Absorption	20 to 30%
Moisture	0.5% Max
Pigment Retained on #325 Sieve	0.1% Max
C.I. Number	11740
Heat Stability	266°F Min

1.4.4 Approved Acrylic Resin Emulsions:

- Dow Fastrack HD-21
- Arkema DT-400

Acrylic resin emulsions must meet the requirements listed in Table 2

**Table 2**  
**Acrylic Resin Emulsions**

<b>Requirement</b>	
Solids Content, %	48.5–51.5
Viscosity, #2 Spindle, 60 RPM, 25°C, cps	250 Max
pH	10.0–10.6
Film Appearance, 3 mil dry	Smooth, clear, continuous

1.5 Finished Paint:

1.5.1 Requirements

- Total Percent Solids — 77% +/- 2%
- Total White pigment per gallon — 7.4 to 8.7 pounds
- Total Yellow pigment per gallon — 7.4 to 8.1 pounds
- Grind ASTM D 1210, Standard Test Method for Fineness of Dispersion of Pigment-Vehicle Systems by Hegman-Type Gage— 3 minimum, 5 maximum
- Viscosity—80–90 KU 77 +/- 1, ASTM D 562, Standard Test Method for Consistency of Paints Measuring Krebs Unit (KU) Viscosity Using a Stormer-Type Viscometer

- pH—9.6 minimum
- Skinning—none within 48 hr.
- Dry Time to No-Pick-Up, per ASTM D 711, Standard Test Method for No-Pick-Up Time of Traffic Paint (no Beads) — 10 min. max.
- Film Appearance—a 15 mil drawdown must exhibit a uniform film appearance with no apparent cracking
- Directional Reflectance, ASTM E1347 Standard Test Method for Color and Color-Difference Measurement by Tristimulus Colorimetry Reflectance, for the white paint shall be a Minimum of 85. Reflectance for the yellow paint may range from 42 to 59, inclusive
- V.O.C. Less than 150 grams/liter
- Dry Time to a no-track condition in five minutes or less when the line is crossed over in a passing maneuver with a standard-sized automobile when applied at a 15 mils wet film thickness in the field at ambient temperatures of 50 to 100 degrees F with a paint spray temperature of 150 degrees F, maximum, and six to eight pounds of post-applied glass beads per gallon of paint.
- Non-High Build Traffic Paint in white, red and black (as listed in the line items) shall be capable of meeting Arizona specifications as well as federal specification TT-P-1952E type 1 and 2

The remainder of the paint composition will be determined by the manufacturer – within the constraints of the requirements above. No glass beads or sand will be permitted in the paint formulations. In addition to being essentially lead and chromium-free, the paint will not contain any hazardous materials at levels that would cause the paint (when dry) to be classified as a hazardous waste.

#### 1.5.2 Filling Instructions:

- Buckets must be filled at 4.95 gal., by weight, with a water float of 0.05 gal.
- Bulk containers must be filled to the proper target weight of the tote. The target weight is determined by the following formula: (Final Fill Volume - Float) X (Weight per Gallon of the specific paint being packaged). The pH of the float water must be between 10.0 and 10.5.

- 1.6 Shipped Products: It will be the manufacturer's responsibility to produce a pigmented waterborne traffic paint containing the necessary: co-solvents, dispersants, preservatives, wetting agents and all other additives so that the paint will retain its viscosity, stability and all other properties as specified herein.

The finished product must maintain a minimum shelf life of one (1) year from date of receipt, provided the product is stored in a shelter or out of direct sunlight and freezing temperatures. Ordered paint will be no more than ninety (90) days old (based on date of manufacture) upon delivery.

The paint, as received, will show no evidence of biological growth, corrosion of the container, or hard setting. The paint will be returned to a smooth and homogenous consistency, which is free from: gel structures, persistent foam or air bubbles – using only hand mixing. Settled pigment will be easily re-dispersed, with a minimum of resistance to the sideways manual motion of the paddle across the bottom of the container. If the paint cannot be easily re-dispersed, due to excessive pigment settlement or any other cause, then the paint will be considered unfit for use. Contractor will be responsible for all costs and transportation charges incurred in replacing paint that is unfit for use.

1.7 Containers and Markings: Contractor will ship the finish products in suitable, strong, well-sealed containers that meet specifications and federal requirements and are sufficiently sturdy to withstand normal shipping and handling. All shipping containers must comply with Code of Federal Regulations, Title 49 and all other applicable Federal and State Regulations governing their use. The containers and lids must be lined with a suitable coating so as to prevent attack by the paint or agents in the airspace above the paint. The lining must not come off the container or lid as skins. Lids with bungholes shall not be used. All containers will be properly sealed with suitable gaskets and will show no evidence of leakage and will remain in a satisfactory condition for a period of twelve (12) months after delivery. Contractor will be held responsible for replacing containers unfit for use and will be responsible for all costs and transportation charges incurred in replacing paint and containers. All containers will be palletized, banded for shipment and packaged so that all items can be safely handled by a forklift truck for the ease of unloading the containers. Supplier will accept return of empty barrels and totes at the City's facility with no additional charge to the City. A tote deposit may not be charged.

1.7.1 Bucket Requirements: Contractor will provide new non-leaking five (5) gallon high-density polyethylene (HDPE) buckets conforming to UN 1H2.

1.7.2 Bulk Container Requirements: When 946-liter (250-gal.) bulk containers are specified, they will be an industry standard type bulk paint container that meets all of the following requirements:

- Tank volumes are estimated, and Contractor will allow a 19-liter headspace for expansion of the paint
- Top openings; 46 cm diameter manhole and 15 cm diameter fill cap/viewport
- Bottom outlet; 5 cm I.D. full flow non-restrictive valve with outlet guard
- Outlet to have 'Ever-Tite' or compatible quick coupler
- Capable of being stacked two (2) high when full
- Capable of being lifted by forklift when full
- Top of tank shall be equipped with one (1) vacuum relief valve and one (1) pressure relief valve

1.7.3 Markings: Contractor will label the finished product containers and cases with a durable label, legibly printed with the following:

- "City of Mesa"
- Name and designation of the product
- Requisition Number
- Batch Number
- Manufacturing date (month and year)
- Gross Weight
- Manufacturer's Name

Contractor will label the sides of containers and cases. Labels must be sufficiently moisture resistant to withstand outdoor storage for a minimum of one (1) year.

After palletizing the finished product, Contractor will place the containers with the labels facing to the outside for easy identification. Once properly labeled, do not modify or change the label in any manner without specific approval.

1.8 Hazardous Materials: For all items that involve hazardous materials:

Contractor will furnish updated Material Safety Data Sheets on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full

hazard information, including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

The MSDS, instructions and information required must be included with each shipment under the contract and shall comply with OSHA's Hazard Communication Standard 29 CFR § 1910.1200.

All products are to conform to the Federal Clean Air Act Amendment of 1990. Volatile Organic Content will be below 150 grams per liter. All products are free of lead, chrome and other heavy or toxic metals. Consult MSDS for additional safety and regulatory information.

**PRICING AND COMPENSATION**

Pursuant to all the contract specifications enumerated and described in this solicitation, we agree to furnish **Pavement Marking Materials and Traffic Paint** to the City of Mesa at the price(s) stated below.

Unit prices shall include all necessary items described in the Scope of Work, **including shipping**. Unit Prices shall be two (2) decimal places only.  
**All items in a group must be bid in order to be considered responsive for that group.**

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TRT) will have a 2.00% removed from the taxable item(s) for the purpose of award evaluation (1.25)

Item No.	Group 1: Preformed Thermoplastic Markings	Unit	Unit Price	Estimated Annual Quantity	Total Price
1	4" Wide Yellow Tape (125 MIL)	LF	\$ 0.83	500	\$ 415.00
2	1.2" Wide White Tape (125 MIL)	LF	\$ 2.31	600	\$ 1,386.00
3	1.2" Wide Yellow Tape (125 MIL)	LF	\$ 2.47	600	\$ 1,482.00
4	1.8" Wide White Tape (125 MIL)	LF	\$ 3.47	1,200	\$ 4,164.00
5	Arrow, Left, 8"2" x 6"3" FHWA Std., (125 MIL)	Each	\$ 72.41	20	\$ 1,448.20
6	Arrow, Right, 8"2" x 6"3" FHWA Std., (125 MIL)	Each	\$ 72.41	20	\$ 1,448.20
7	Arrow, Straight, 9"10" x 3"3", FHWA Std., (125 MIL)	Each	\$ 62.44	20	\$ 1,248.80
8	Arrow, Combi Left, 13"1" x 7"4", FHWA Std., (125 MIL)	Each	\$ 130.94	10	\$ 1,309.40
9	Arrow, Combi Right, 13"1" x 7"4", FHWA Std., (125 MIL)	Each	\$ 130.94	10	\$ 1,309.40
10	Arrow, Lane Reduction, Left or Right, 18" x 5"8", FHWA Std., (125 MIL)	Each	\$ 186.85	20	\$ 3,737.00
11	4ft Bike Rider Symbol FHWA Std., (90 MIL)	Each	\$ 43.10	25	\$ 1,077.50
12	Shared Lane Bike Symbol, White 9"4" x 3"4", FHWA Std., (90 MIL)	Each	\$ 80.75	100	\$ 8,075.00
13	"ONL Y" Marking, 8' Letter Height, FHWA Std., (125 MIL)	Each	\$ 103.67	25	\$ 2,591.75
14	SPEED HUMP Marking, 8' x 6', FHWA Std., (125 MIL)	Each	\$ 31.91	150	\$ 4,786.50
15	RAILROAD CROSSING KIT, 20' x 8', FHWA Std., (125 MIL)	Each	\$ 198.47	25	\$ 4,961.75
16	Blackout Material, 4" x 3', (125 MIL)	SF	\$ 0.78	300	\$ 234.00
17	Yield Line (Sharks Teeth), 24" x 36", FHWA Std., (125 MIL)	Each	\$ 8.90	25	\$ 222.50
Percentage off catalog price/MSP on all hardware and supplies not listed in this bid VARIES DEPENDING ON ITEM					% 10%-55%
Total of Group 1: Preformed Thermoplastic Markings					\$ 39,897.00

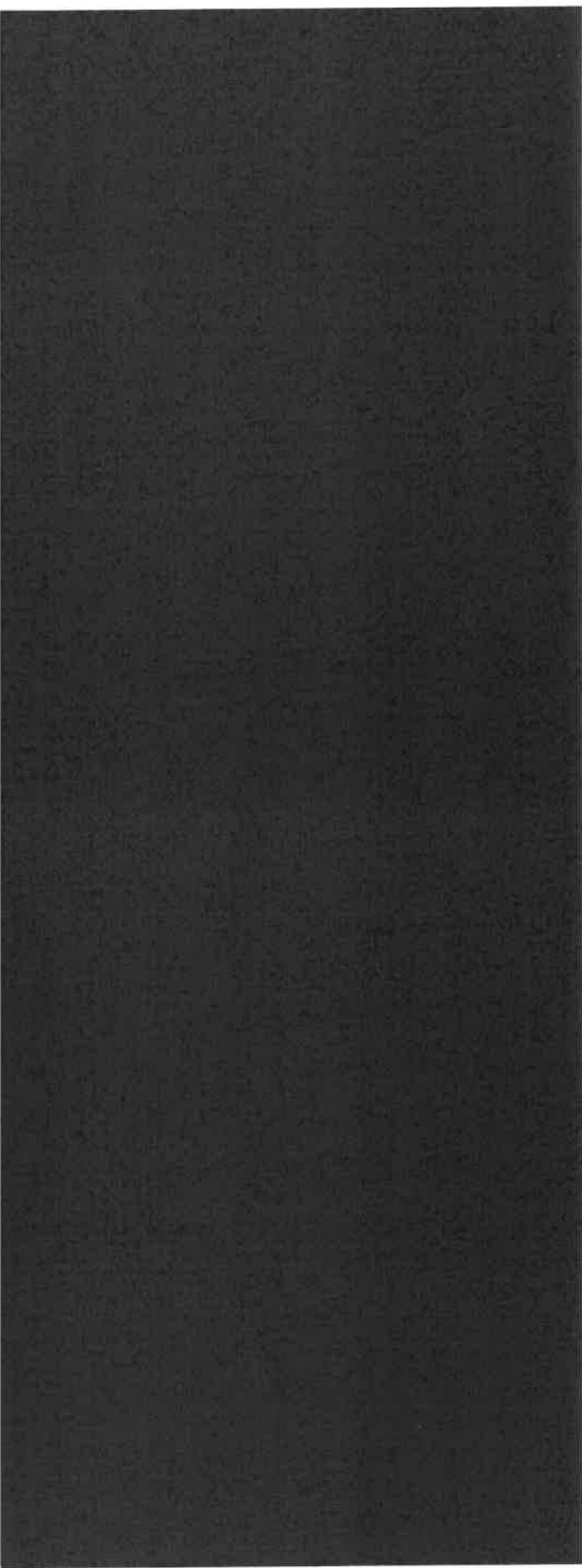
Item No.	Group 2: Waterborne Traffic Paint	Unit	Unit Price	Estimated Annual Quantity	Total Price	Minimum Order Required? (Yes or No)	If Yes, What Minimum Quantity is Required?
18	White Waterborne High Build Traffic Paint (5 Gallon Bucket)	Each	\$ 66.50	75	\$ 4,987.50	NO	
19	White Waterborne High Build Traffic Paint (250 Gallon Tote)	Each	\$ 3,037.75	40	\$ 121,510.00	NO	
20	Yellow Waterborne High Build Traffic Paint (5 Gallon Bucket)	Each	\$ 66.42	20	\$ 1,328.40	NO	
21	Yellow Waterborne High Build Traffic Paint (250 Gallon Tote)	Each	\$ 3,344.50	20	\$ 66,890.00	NO	
22	White Waterborne Fast Dry Traffic Paint (5 Gallon Bucket)	Each	\$ 61.72	50	\$ 3,086.00	NO	
23	Red Waterborne Fast Dry Traffic Paint (5 Gallon Bucket)	Each	\$ 80.95	10	\$ 809.50	NO	
24	Black Waterborne Fast Dry Traffic Paint (5 Gallon Bucket)	Each	\$ 69.44	5	\$ 347.20	NO	

Percentage off catalog price/MSRP on all hardware and supplies not listed in this bid

%

N/A

Total of Group 2: Waterborne Traffic Paint \$ 198,958.60



**EXHIBIT C  
MESA STANDARD TERMS AND CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.

- 25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like, and professional manner. The City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.

- 26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.

- 27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

- 28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.

- 29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.

- 30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.

- 31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.

- 32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this

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

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

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

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

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

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

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

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

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