

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HENRY BROS., INC.**

This Linking Agreement (“Agreement”) is entered into as of this _____ day of _____, 20____, between the City of Glendale, an Arizona municipal corporation (“City”), and HENRY BROS., INC., an Arizona corporation, authorized to do business in Arizona (“Contractor”), collectively, the “Parties.”

RECITALS

- A. On December 2 , 2024, a member of the 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 Electrical Maintenance, Installations and Lighting Repairs Contract No. 2025005 (“Cooperative Agreement”), which is attached hereto as **Exhibit A**. The Cooperative Agreement allows 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 wishes to contract with Contractor for supplies or services identical to those being provided to other units of government under the Cooperative Agreement. Contractor consents to the City’s cooperative use of the terms and conditions of the Cooperative Agreement, and agrees to provide the supplies and services set forth in the Statement of Work appended hereto as **Exhibit B**.

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.

- A. As provided in the Cooperative Agreement, purchases can be made by governmental entities from the date of award, which was February 1, 2025, until the date the contract terminates on January 31, 2028, unless the term is extended by mutual agreement of the parties to the Cooperative Agreement. The Cooperative Agreement, however, may not be extended beyond January 31, 2030. The initial period of this Agreement is the period from the Effective Date of this Agreement until January 31, 2028.
- B. The City may extend the term of this Agreement for a maximum of two (2) years, consistent with any extension of the Cooperative Agreement. The City may give the Contractor notice that it is exercising its option to extend this Agreement 30 days prior to the anniversary of the Effective Date, if such notice is practicable. Glendale extensions are not automatic and shall only occur if the City affirmatively exercises its right to extend this Agreement.

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 One million dollars (\$1,000,000) for the entire term of the Agreement (initial term plus any extensions).
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. Uyghur Forced Labor Prevention Act (UFLPA). Contractor certifies that it does not currently, and during the term of this Agreement, will not use:
 - a. the forced labor of ethnic Uyghurs in the People’s Republic of China;
 - b. any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
 - c. 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.

10. 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.
11. 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 Sonia Sarmiento
6210 W. Myrtle Ave Ste, 111
Glendale, AZ 85301

and

HENRY BROS., INC.
c/o Collin Stevenson
collin.stevenson@decasw.com
1404 W. San Pedro St
Gilbert, AZ 85233

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”

HENRY BROS., INC.,
an Arizona corporation

By:  _____

Name: Collin Stevenson
Title: General 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
HENRY BROS., INC.**

**EXHIBIT A
CITY OF MESA CONTRACT NO. 2025005
ELECTRICAL MAINTENANCE, INSTALLATIONS, AND LIGHTING REPAIRS.**

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HENRY BROS., INC.**

**EXHIBIT B
Scope of Work**

In accordance with the terms and conditions of this Agreement and the City of Mesa Contract No. 2025005, the City is utilizing the contractor to provide electrical maintenance, installation, and lighting repairs for City-wide parking lots and parks on as-needed basis.



AWARD RECOMMENDATION

Contract Number: 2025005

Contract Title: Electrical Maintenance, Installations and Lighting Repairs

Award is recommended to: (insert additional rows if necessary)

Table with 4 columns: Vendor, Amount, Bid Amount, Tax, Total Amount, Comments. Rows include DECA Southwest with \$85,000.00 and a total amount of \$85,000.00.

Award Amount: \$85,000.00 [X] Annually (Year 1 and beyond) [] 1-Time Contract [] Project [] Annually (Year 2 and beyond, if different than Year 1)

[] Bid/Quote is the lowest, responsive, and responsible.

If any bids/quotes were deemed non-responsive, please explain on the next page.

[X] Proposal is the highest-scored proposal. [X] Proposal is also the lowest cost. If you are recommending award to a vendor other than the highest-scored, please attach an explanation or include an explanation in the "Additional Comments" section. Proposals are not always awarded to the lowest cost. This is just for information.

[] Qualifications is the highest scored. If you are recommending to a vendor other than the highest-scored, please explain on the next page.

[] Sale is the highest bid. If any bids were deemed non-responsive, please explain on the next page.

Funding Source:

- 4200/1207/1491 (S954, S955, S956, S957)
4200/1101/1492 (S954, S955, S956, S957)
4200/1101/1368 (S469, S470, S471, S472, S473, S476, S477, S478, S581, T146, T194)
4200/1105/HHK/1343/S468
4200/1105/CUB/1466
4200/1101/1354/ (S945, S946, S947, S948, S949, S950, S951, S952, S953, S982)

[] Grant Funded. Please attach grant documents that contain any bid requirements. Grantor

[X] I am not aware of any conflict of interest on my part or the vendors, and I/we have committed no indiscretion or accepted any gratuities or favors that would compromise my/our impartiality.

Recommended by:

[Signature] 10.31.24
1) Requested by Date

[Signature] 11/7/2024
2) Dept. Manager/Administrator Date

[Signature] 11/18/24
3) Department Head Date

[Signature] 11/20/2024
4) Procurement Officer Date

[Signature] 11/20/2024
5) Procurement Administrator Date

6) Chief Procurement Officer Date
(for Awards >\$50,000 - &100,000)

AWARD RECOMMENDATION

Briefly describe the goods or services being purchased and how they will be used by the City:

(this information will be used to create a Council or Administrative Award Report).

Electrical services which may include but not limited to installation, repairs, upgrades, and routine maintenance within the Parks and Recreation Division to include Parks, Basins, Sports Field and Aquatic Facilities. Repairs often involve servicing light poles up to 90' high to complete repairs at Sports Complexes to ensure safe field use.

Desired Start Date for Term Contract: 2-1-2025

For Equipment or Vehicles, this is an:

- Addition
 Replacement

If only 1 bid was received, do you know why more bidders didn't participate?

N/A

Please explain any responses that were deemed "non-responsive".

N/A

Are there alternatives to this purchase for the Council or Purchasing to consider?

No

What are the consequences if the award is postponed or this request is denied?

PRCF will need to resolicit proposals for Electrical Maintenance Services for the Parks and Recreation Division.

Additional Comments:

Contractor has specialized equipment to service 90' light poles to include cranes and lifts. PRCF does not have this equipment to service the 90' poles due to cost and liability concerns.



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT NUMBER 2025005
ELECTRICAL MAINTENANCE, INSTALLATIONS AND LIGHTING REPAIRS**

CITY OF MESA, Arizona (“City”)

| | |
|------------------|--|
| Department Name | City of Mesa – Procurement Services |
| Mailing Address | P.O. Box 1466 Mesa, AZ 85211-1466 |
| Delivery Address | 20 East Main St, Suite 450 Mesa, AZ 85201 |
| Attention | Jess Romney, NIGP-CPP, CPPB Procurement Supervisor |
| E-Mail | Jess.Romney@MesaAZ.gov |
| Phone | (480) 644-5798 |

With a copy to: City of Mesa – PRCF
Attn: Mike Baumann
Parks Maintenance Supervisor
P.O. Box 1466
Mesa, AZ 85211-1466
Mike.Baumann@MesaAZ.gov

AND

HENRY BROS., INC. dba DECA SOUTHWEST, (“Contractor”)

| | |
|------------------|--|
| Mailing Address | 1404 W. San Pedro St. Gilbert, AZ 85233 |
| Remit to Address | |
| Attention | Collin Stevenson General Manager |
| E-Mail | Collin.Stevenson@DECASW.com |
| Phone | (602) 399-1932 |
| Fax | (480) 962-4008 |

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to Solicitation ("Agreement") is entered into this 2nd day of December 2024, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **Henry Bros., Inc. dba Deca Southwest**, a(n) State 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 **2025005** ("Solicitation") for **Electrical Maintenance, Installations and Lighting Repairs**, 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 1, 2025** and ending on **January 31, 2028**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.

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

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

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

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

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

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

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

5. **Payment.**

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

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

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

No price modifications will be accepted without proper request by the Contractor and response by the City's Procurement Services 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 Contract expiration date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted

thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

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

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

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

6. **Insurance.**

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

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

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

- 6.4 Each insurance policy required under the Agreement must be in effect at or before the execution of the Agreement and remain in effect for the term of the Agreement.
- 6.5 Before the execution of the Agreement, Contractor shall provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
- 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including 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) Special Terms and Conditions and Detailed 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

HENRY BROS., INC. dba DECA SOUTHWEST

By: _____

By: *Colin Stevenson*

Printed Name

Colin STEVENSON
Printed Name

Title

GENERAL MANAGER
Title

Date

11/21/2024
Date

REVIEWED BY:

By: *Jess Romney*
Jess Romney, NIGP-CPP, CPPB
Procurement Supervisor

EXHIBIT A
SCOPE OF WORK

1. **DEFINITION OF TERMS:** For the purpose of this agreement, the following words and terms shall be defined as hereinafter set forth:
 - 1.1 "Agreement" shall mean this contract with the City of Mesa for Electrical Maintenance Services.
 - 1.2 "City" shall mean the City of Mesa, Arizona, its officers, employees, or representatives.
 - 1.3 "Contract Boundaries" shall mean the area within the perimeter of each individual contract service area described and listed in this original agreement or later added by change order.
 - 1.4 "Contractor" shall mean the person, corporation, or partnership contracted to perform lake maintenance services under this Agreement.
 - 1.5 "May" shall mean permissive.
 - 1.6 "Should" shall mean expected.
 - 1.7 "Shall" shall mean mandatory.
 - 1.8 "Routine Work" shall mean all work tasks/requirements described in the Detailed Specifications Section of this contract.
 - 1.9 "Emergency Response Work" shall mean any work the City requests the Contractor to perform which is in response to an immediate hazard or other emergency as determined by the City. The Contractor must be available to commence work within two hours of receiving the City's request.
 - 1.10 "Seasonal Hours" shall mean the operational hours and/or schedule which the Parks, Recreation, and Community Facilities (PRCF) - Parks Maintenance Division utilizes.
 - October 1 – April 30: 6:00 AM – 2:30 PM
 - May 1 – September 30: 5:00 AM – 1:30 PM
 - 1.11 "Corrective Work" shall mean any requested work tasks the City finds to be incomplete, deficient, or unsatisfactory that must be rectified by the Contractor.
 - 1.12 "Withholding Notice" a notice used to inform the Contractor of unsatisfactory work performance, correction time limits, and deduction amounts if not satisfactorily resolved.
 - 1.13 "Release" is the notice issued to the Contractor that demonstrates Withholding deficiencies have been corrected to the City's satisfaction.
 - 1.14 "Deduction" shall mean money that is deducted from the Contractor's invoice as a result of unsatisfactory performance of services that were not satisfactorily corrected.
 - 1.15 "Non-Performance Fees" shall mean a predetermined amount of money that must be paid as damages for failure to perform under a contract.
2. **PROJECT SPECIFICATIONS:** Unless otherwise specified, service for routine contract pay items and special work items shall include furnishing all labor, supervision, equipment, tools, fuel, materials (unless provided by the City in accordance with these documents), insurance, bonding, and all other items incidental thereto which are necessary to perform the work as specified. The Contractor shall provide a yard for parking, maintenance, and storage of supplies and equipment at a site other than on City property and at no added cost to the City.
3. **ADDITIONS AND DELETIONS:** The City may add and/or delete maintenance areas at any time by change order. The Contractor will be paid for all approved services satisfactorily completed. The City reserves the right to utilize the prices and services originally proposed for future award recommendations. Pricing for areas added to the contract shall be consistent with pricing for other comparable contract sites.

4. **VANDALISM AND VEHICLE ACCIDENTS:** If an accident occurs while performing work on City or Mesa Public Schools property, the Contractor shall report the accident to the City within two (2) working hours of discovery. All cases of vandalism shall be reported to the City immediately. The City will review the situation and determine the appropriate course of action.

5. **DISPOSAL OF DEBRIS, TRASH, OR OTHER WASTE:** All debris, trash or other waste that is accumulated or generated from the work performed under this agreement shall be removed from the Contract Sites. Using City waste receptacles is prohibited. The transport and disposal of said materials shall be in compliance with federal, state, county, and City laws and regulations.

The Contractor is solely responsible for any disposal fees (dumping charges), incurred due to routine work. Fees for disposal of debris accumulated from extra work or emergency response work shall be listed as "Extra" or "Emergency Response Work" on the invoices as a separate item to be reimbursed by the City. The disposal must be at an authorized landfill. Disposal costs greater than the area's current fee range will be the responsibility of the Contractor. A copy of the disposal fee invoice must be submitted with the extra work invoice to receive payment.

6. **CONTRACTOR/CITY COMMUNICATIONS:**

6.1 **Local Office.** Throughout the period of this contract, the Contractor shall establish and maintain a local office and an authorized managing agent. The local office shall be within a one (1) hour drive time from the contract area.

Contractor's local managing agent shall serve as the point of contact for dealing and communicating with the City. Upon City request, the General Manager, President or their designee shall meet with City representatives within twenty-four (24) hours of receiving notice.

6.2 **City Contact.** The Contractor's primary contact will be the PRCF Parks Maintenance Foreman or authorized City representative in all matters pertaining to change orders, invoice authorization, schedule approvals or daily performance of this contract.

6.3 **Field Supervisor.** The Contractor shall furnish one (1) qualified field supervisor that speaks, reads and writes in English. The field supervisor shall oversee the work of their staff, perform inspections of completed work, meet with the City representative upon request within one (1) working day, and submit inspections and daily work reports to the City during the first hour of the City's workday (Monday thru Friday).

Field Supervisors shall not perform routine duties, but should be available to manage staff, respond to deficiencies and emergency callouts, inspect work of field staff, complete and submit daily paperwork to the City. Additionally, the Field Supervisor shall not also function as a crew leader or foreman and shall have separate transportation to be able to move independently between jobsites.

The Field Supervisor may not supervise other contracts unless approved by the City.

The Contractor shall provide the Field Supervisor a mobile telephone device with voice calling, text, company email, and photo capabilities for the purpose of communicating with City. The device must be kept in operational condition.

Contractor shall provide a daytime contact to address complaints as they arise.

7. **CONTRACTOR'S EMPLOYEES:** The awarded Contractor shall supply proper levels of manpower, equipment and supplies to perform work to acceptable standards in the required timeframes.

7.1 **Identification.** All Contractor staff assigned to work under this contract shall be cleared through the City's background check process, have a City issued security badge with a rating of level two (2) visibly displayed, and be in company uniform bearing the Contractors name upon commencing work.

Contractor personnel assigned to this contract may be required to be fingerprinted in conjunction with a background check through the City of Mesa. All expenses related to this process will be paid by the City of Mesa. (Attachment C)

City security/identification badges issued to Contractor personnel are City property that shall be returned to the City upon termination/separation of employment, or at the end of contract term. Failure to do so will result in Non-Performance Fees charges being deducted from the billing cycle immediately following the incident.

Only Contractor employees authorized by the City are allowed on contract sites while performing services. Individuals not authorized by the City (friends, acquaintances, family members, assistants, etc.) are prohibited (Attachment E).

All contracted employees performing work at a Mesa Public Schools facility must check in at the front office daily prior to work beginning. The employee must have an identification badge at all times in clear view, with picture ID and name of firm. In addition, the employee shirt must have the company name on it. Failure to have any of these items will result with the employee being escorted off property.

7.2 **Driver's License.** Employees driving the Contractor's vehicles shall at all times possess and carry a valid vehicle operator's license issued by the State of Arizona, the class of which shall be appropriate for the vehicles operated, in accordance with State law.

7.3 **Conduct.** Contractor personnel (employees and/or officers) shall not identify themselves as being employees of the City of Mesa. They shall conduct themselves in such a manner as to avoid embarrassment to the City of Mesa. Additionally, it is expected that all interactions with the public or City officials be professional and courteous. In the event of difficulty with the public or City officials, the City shall be notified immediately.

The Contractor shall prohibit its employees from using any substances (drugs, alcohol, etc.) that may cause impairment while performing their duties under this contract. Contractor staff suspected of being impaired shall be immediately removed from performing work under this contract.

Contractor employees that exhibit poor conduct, as determined by City shall be removed from the contract upon the City's request.

The Contractor shall be liable for any damages or losses caused by its employees, equipment, or agents during the agreement period.

7.4 **List of Employees.** The Contractor shall submit a list of all employee names who will perform work under this contract (Attachment E) no later than ten (10) business days prior to the start date. The list must include full name, driver's license number with expiration date, job title, and relevant certifications. Changes to the employment list shall be reported to the City within twenty-four (24) hours with an updated list provided at least monthly. Failure to submit lists as stated shall be subject to Non-Performance Fees as set forth in Special Terms and Conditions Section 13.0. Repeated failures may result in a Notice of Default.

7.5 **Communications Skills.** Supervisors and at least one (1) crew member of each work crew shall be proficient enough in the English language to receive/transmit oral or written instructions, interpret work request and otherwise communicate with City representatives.

8. **CONTRACTOR'S EQUIPMENT:**

8.1 **Vehicles and Equipment.** The Contractor shall submit to the City prior to the start of the contract and keep up to date for the duration, its inventory of vehicles and equipment that will be used. All vehicles and equipment are to be maintained in good repair, both mechanically and in appearance.

8.2 **Vehicle Identification.** All Contractor vehicles used under this agreement must be clearly identified with the name of the company, assigned vehicle number, and phone number of the local office on each side of the vehicle.

The City reserves the right to inspect the Contractor's vehicles at any time to ascertain said condition.

Contractor vehicles that cause damage (turf or irrigation system, leaking fluids on concrete or other hard surface areas, etc.) may be subject to actual repair and/or cleanup costs. Non-Performance Fees may also apply.

- 8.3 **Vehicle Use and Access.** Designated access points, pathways, and parking areas are generally the least likely to cause damage and it is expected that they be used. Departing from these approved instructions will result in Non-Performance Fees, and additional repair costs shall be the responsibility of the Contractor if damage occurs.

Vehicles shall not be permitted to enter a turf, xeriscape, or natural habitat area from a perimeter roadway, pathway, or parking lot, without the prior approval of the City. Parking on sidewalks shall be restricted. The Contractor will not at any time be allowed to park on a sidewalk adjacent to any Arterial or Major Collector Street without providing appropriate barricading or traffic control (per Traffic Barricading Manual), to allow Pedestrian traffic a safe route around vehicles. The contractor will repair any damage caused by entering these areas at no cost to the City of Mesa.

During the day-to-day performance of work under this contract, the Contractor shall make every reasonable effort to ensure their vehicles do not enter the Critical Root Zone (CRZ) of City trees. Tasks that may require a vehicle to operate within the CRZ shall be performed with the utmost care, to minimize the impact. The City shall be notified prior to entering the CRZ.

The CRZ is equal to three feet (3') outside the dripline or one foot (1') radially from the tree for every one inch (1") of trunk diameter at the breast height, whichever is greater. The intent of this requirement is to eliminate unnecessary compaction of the soil within the CRZ of trees and palms.

9. **SCHEDULING OF WORK:**

- 9.1 **Routine Work Schedule.** Contractor shall coordinate all repair/installation schedules with the City of Mesa point of contact before beginning work. All routine work must be scheduled within two (2) working days of approval by the City of Mesa. All electrical work requiring a power outage shall be made during an approved time limit and must be coordinated by the designee point of contact.

- 9.2 **Work Hours/Holiday Schedule.** Work shall not be conducted on the following holidays observed by the City of Mesa.

- A. New Year's Day – January 1
- B. Martin Luther King Day - Third Monday in January
- C. Presidents' Day Third Monday in February
- D. Memorial Day Last Monday in May
- E. Independence Day July 4
- F. Labor Day First Monday in September
- G. Veterans' Day November 11
- H. Thanksgiving Holiday Fourth Thursday and the following Friday in November
- I. Christmas Eve December 24
- J. Christmas Day December 25

10. **COMPENSATION:**

- 10.1 **Payment.** Contractor's invoices shall be rendered per completed work order request. Invoices shall be itemized by completed job. Each invoice shall include:

- I. Location of work and assigned purchase order number
- II. Description of labor charges
- III. Equipment Charges
- IV. Description of material charges and materials used
- V. Total charge

Any and all work for which a complete and accurate invoice is not received by the City within forty-five (45) days of completion shall not be paid.

Payment for work in any given area will be upon completion and acceptance by the City.

At the City's request, the Contractor shall submit copies of payroll reports. Payroll reports shall include names of employees, hours worked, days worked, location worked, and classification for all employees who performed the work.

The amounts invoiced shall be those agreed upon by this contract or by change order to the contract. The unit price shall include all labor, materials (unless supplied by the City), equipment, overhead, profit, and any other incidental costs to perform the contracted maintenance.

- A. **Deductions to Payments Due:** The City shall establish the payment amount. If the Contractor fails to perform the work in accordance with the contract, the City may hold part or all payments due to the Contractor. Payment may be withheld (never paid) if the Contractor fails to perform or fails to satisfactorily correct poor performance within the Correction Time Limit Schedule. Deficiencies resolved within acceptable time limits and to the City's satisfaction will be released for payment.

The City may determine it is necessary to hire an outside contractor to perform work that was not or could not be corrected to the City's satisfaction by the primary Contractor. The City shall withhold the cost of such outside services in the billing cycle immediately following the incident.

- B. Failure to correct areas identified as deficient by the City within the limits of this correction time limit schedule, unless written extensions have been authorized, may result in cause for termination of the contract in accordance with provisions of this document.

| CORRECTION TIME LIMIT SCHEDULE (Time starts upon receipt of notification) | |
|---|---------------------------------|
| Emergency Response Work | 2 Hour Response – Complete ASAP |
| Unsatisfactory Service | 2 Working Days |

- 10.2 **Payment Requests, Work Reports, and Re-inspection.** The Contractor shall submit to the City a detailed report of work items completed per project. The report will be due within one (1) hour after the City work shift begins on the workday after completion of the work. Late submittal of reports or inclusion of incomplete tasks may result in a re-inspection fee charge.

Emergency Response items shall be reported daily, whether complete or not.

The City will inspect the work listed and approve or disapprove each item for payment. Items found to be incomplete or deficient in workmanship will be noted and a withholding notice issued to the Contractor. The withholding notice will be considered official notification of deficiencies. Additional information concerning the specifics of the deficiency will be given to the Contractor upon request. Deficient or incomplete work must be corrected in accordance with Special Terms and Conditions paragraph 10.1A.

If after a second inspection by the City, the City Inspector again finds serious deficiencies, or incompleteness, a \$50.00 re-inspection fee will be assessed for each area found in this condition. Accumulated re-inspection fees will be deducted from the Contractor's monthly payment.

11. **EMERGENCY RESPONSE:** The Contractor shall be prepared to respond to electrical emergency calls on a twenty-four (24) hour, seven (7) day per week basis. "Emergency Response Work" shall mean any work the City requests the Contractor to perform which is in response to an immediate hazard or other emergency as determined by the City. The Contractor must commence work within two (2) hours of receiving the City's request. Failure to respond shall be considered a default of Contract. Repeated failures are subject to termination as set forth in Mesa Standard Terms and Conditions section 16.

The Contractor shall provide the names and phone numbers of employee(s) who will be assigned to respond to after-hour "Emergency" situations. The City shall also be kept informed of the name of the specific person assigned to respond on any given day.

The Contractor shall respond to the site where the emergency exists within two (2) hours of receiving notification from the City. During "off duty" hours, the Contractor's employee assigned to respond to the emergency shall only take those actions that will enable the problem to be downgraded from an emergency. However, in no case shall a hazardous condition be left uncorrected.

The Contractor's employee who responds to each emergency shall fill out an "Emergency Response Report" with information that explains the emergency call-out and the actions taken to correct the problem. The report shall also indicate the name of the City Employee who called, the time of day when he/she received the call, the time of day upon his/her arrival at the job site and the elapsed time spent on the job site correcting the problem.

Payment for "Emergency Response" shall comply with the Contractor's hourly labor rate listed in the Pricing and Compensation document. However, if the emergency was caused by the Contractor's failure to adequately perform, no compensation shall be made for responding to the emergency. The City shall make the determination whether or not payment is due after reviewing the "Daily Work Report" and the work performed.

12. **OFFICIAL ADDRESSES AND TITLES:** The official City representative and overall Contract Administrator is the Business Services Dept. Director, whose address is; City of Mesa Purchasing, 20 E. Main Street, Suite 400 (85201), P. O. BOX 1466, Mesa, Arizona 85211-1466. This person is authorized to approve change orders to the contract.

13. **NON-PERFORMANCE FEES /PERFORMANCE GUARANTEES:** It is the City's expectation that all electrical work under this agreement be performed as defined in this agreement. If tasks are omitted or not satisfactorily completed, public health, safety and welfare are compromised, the Contractor and City agree upon the following schedule of Non-Performance Fees to be deducted from monies due or to become due to the Contractor. These sums are fixed and agreed upon, not as a penalty, but because the parties agree that the actual loss to the City and to the public caused by the omission of work or substandard performance is impractical and extremely difficult to ascertain.

NON-PERFORMANCE FEES TABLE

| SITUATION | DEDUCTION AMOUNT |
|--|--|
| A. Failure to respond to emergency calls within the specified time limits. (Special Terms and Conditions Sec. 11) | \$100 per site/emergency |
| B. Failure to correct deficiencies within the time allowed in the Correction Time Limit Schedule. (Special Terms and Conditions Sec. 10.1B) | \$100 per site/day |
| C. Failure to start and satisfactorily complete routine work within contract or schedule requirements. (Special Terms and Conditions Sec. 9.0) | \$100 per day plus the City has the right to re-award and charge any increased difference to the Contractor. |
| D. Illegal or non-conforming waste disposal. (Special Terms and Conditions Sec. 5.0) | \$100 per site/day |
| E. Failure to attend meetings, submit reports, or schedules within the dates and times required. (Special Terms and Conditions Sec. 6.3) | \$100 per occurrence |
| F. Field supervisor performing labor without City authorization or not being available during working hours to address problems, do field inspections, and/or meet with City representatives. (Special Terms and Conditions Sec. 6.3). | \$100 per occurrence |
| G. Failure to meet identification requirements of | \$100 per occurrence |

NON-PERFORMANCE FEES TABLE

| SITUATION | DEDUCTION AMOUNT |
|---|--|
| contract, either person or vehicle (Special Terms and Conditions Sec. 7.1) | |
| H. Failure to comply with Parking Restrictions on Arterial and Major Collector Streets, and/or failure to provide alternative pedestrian route around work areas when parking on or blocking sidewalks. (Special Terms and Conditions Sec. 8.3) | \$100 per occurrence |
| I. Failure to return City issued badges of past employees. (Special Terms and Conditions Sec. 7.1) | \$100 per incident/employee |
| J. Failure to comply with List of Employees requirements. (Special Terms and Conditions Sec. 7.4) | \$100 per occurrence |
| K. Failure to comply with environmental regulations or wasting resources. | \$100 per occurrence |
| L. Damage caused by Contractor to City property (turf and/or irrigation systems, vehicle fluids leaking, etc., Special Terms and Conditions Sec. 7.3 and 8.1) | \$100 per occurrence/actual repairs costs may also apply |

14. **QUALITY STANDARDS:** The instructions, requirements, and specifications found herein are the minimum standards that are acceptable to the City.

14.1 **Quality Control and Reporting.**

- A. The Contractor shall ensure all work hereunder be performed in a satisfactory manner and in accordance with contract specifications. The Contractor's supervisory personnel shall perform frequent and systematic inspections of all premises on which work is being performed to assure a high quality of work by the Contractor's employees.
- B. The City shall perform contract compliance inspections on work the Contractor submits or reports as complete. Deficiencies identified will be handled as outlined in the Special Terms and Conditions Sections 10 and 13.

15. **CONTRACTOR'S RESPONSIBILITIES:**

15.1 **Minimum Qualifications.** Contractor shall provide references of current and past agencies or companies for which your firm has provided similar services. Contractor shall have a Registrar of Contractors License and qualified electricians with the equipment and tools necessary to perform the required work.

15.2 **Qualification of Electrician.** The contractor shall have a licensed, qualified electrician employed. The individual shall be able to diagnose, and correct electrical problems encountered in service panels, underground wiring and lighting fixtures and controls. Individual shall be familiar with the use of equipment for troubleshooting problems.

15.3 **Contact Requirements.**

- A. Contractor shall have a minimum of three (3) years' experience providing like services to public entities.
- B. Contractor's license shall be current and valid for a minimum of three (3) years.
- C. Contractor shall provide evidence of their NFPA70E safety program to the City of Mesa.
- D. Contractor shall provide evidence of their Lockout/Tagout program to the City of Mesa.
- E. Contractor's employees' field staff must have completed an approved apprenticeship program or equivalent training or have three years of experience as a skilled electrician.

- F. No unresolved complaints on file with the Arizona Registrar of Contractors within the past five (5) years.
- G. Work, materials and equipment must comply with the latest rules and regulations of the following:
 - a. National Electrical Code (NEFFPA 70)
 - b. Occupational Safety and Health Act (OSHA)
 - c. American Society for Testing and Materials (ASTM)
 - d. Applicable city, state, and federal codes, ordinances and regulations
- H. Contractor shall be familiar with all aspects of electrical maintenance, including installation of all sizes of electrical conduit, cables, wires, and switches.

16. **SCOPE OF WORK:** Contractor shall furnish all labor, equipment and tools necessary to provide routine, preventative and emergency maintenance of all components of the lighting and electrical systems within the Parks and Recreation Division of the City of Mesa.

In general, the scope of work for electrical services may include but not be limited to installation, repairs, upgrades and routine maintenance to include supervision, labor, equipment, materials, tools and transportation to complete all work. The scope of work will be divided into two major categories, 1) Low Voltage Electrical Services, 2) Parks, Basins, Sports Field and Aquatic Facilities lighting maintenance, repairs and installation.

1) **Low Voltage Electrical Services:** Defined as less than 600 Volts

- a. Types of Service Work: Wire/cable replacement, transformers, switchgear and switchboard assemblies, distribution panels, circuit breakers, grounding systems, panel boards, disconnects, motor control centers, relay cabinets, variable speed drives (VFD), emergency and normal electrical power systems, electrical blue staking and light pole replacements or install etc.

2) **Parks, Basins, Aquatic Facilities and Sports Field lighting Services**

- a. Troubleshooting, maintenance, repairs and bulb replacement of sports field, parks and basin lighting and lighting control systems, lighting retrofits, LED solutions, daylight harvesting, sorts and controls systems and other associated electrical equipment.

NOTE: Park lights range from 150-watt HPS for area lights to 250 and 1000 Watts at basketball courts and volleyball courts. Tennis courts lights range from 250 Watt to 1000 Watt to 1500-Watt metal halide. Ball field and soccer fields are typically 1500-Watt metal halide. Voltages range from 120 volts to 480 volts. Some lighting has been converted to LED.

Light poles range in height from 20' (area light poles) to 25'/30' basketball court poles and up to 90' for the ball field/soccer light poles.

Remote controlled lighting and irrigation systems are in operation in numerous parks and Contractor shall have a working knowledge of these types of systems.

For all bulb replacements, Phillips manufacture is the preferred by the City of Mesa.

Communication Towers: It shall be the contractor's responsibility to coordinate with cell phone providers when working on or around lighting structures that serve as communication towers. The contractor shall follow all rules, regulations and safety requirements while performing this type of work.

17. **MULTIPLE VENDORS:** The City reserves the right to award to multiple Contractors.

18. **TECHNICAL REQUIREMENTS:** Each contractor assigned to this contract shall have the licenses, tools, equipment, materials, and technical ability to perform such services.

The Contractor shall provide all labor, supervision, transportation, equipment (including testing and all personal protection equipment), tools, and all effort necessary to make the required electrical systems repairs/retrofits, complete and operational.

Contractor will be responsible to source all electrical parts/components/fixtures and equipment necessary in the repair or new installation of electrical and distribution systems. Exceptions may be, if in the best interest of the City to utilize its own electrical commodity contract to source said supplies.

Replacement parts/fixtures shall be warranted for two (2) years, unless longer warranties are available from manufacturers. All parts and electrical equipment provided by Contractor shall be new, except as otherwise stated on the drawings. All parts and electrical equipment shall be UL listed when such standards exist for the type of equipment. All electrical equipment and materials furnished by the Contractor shall be commercial quality and grade and be from a warranted product line.

All electrical work shall comply with the requirements of the applicable edition of the National Electric Code and State/Local building codes.

All work performed by the Contractor shall be subject to inspection and approval by the designated City of Mesa representative.

Specifications for the work to be performed by contractor and approved by the City of Mesa shall be adhered to. Contractor may recommend alternate specifications or additional specification for work; however, any alternate specification shall comply with all applicable rules, regulations, statutes, ordinances, codes, and standards. Contractor shall obtain approval from the City of Mesa prior to using any alternate specifications for any work to be performed under the contract.

Prior to starting any work, contractor shall notify City of Mesa of any specification that is in conflict with applicable rules, regulations, statutes, ordinances, codes, and standards, and offer an alternate solution that is in compliance with said rules.

When any aspect of a project is not covered by a specification, building code, or standard, the minimum standard for good and workmanlike construction shall be established usage, procedures and acceptable industry standards.

All work shall be accomplished in a manner to match adjacent existing work in the same area or on same elevation where practicable. Contractor will not make adjustments to or alter in any manner member's existing facilities without prior approval from the City of Mesa.

Upon request from the City of Mesa, the contractor shall obtain permits required for a job. The City of Mesa shall reimburse the contractor for actual cost of such permits. No amount for overhead and profit will be allowed for permits.

Prior to final acceptance of project completion, the contractor shall provide the City of Mesa a complete set of "as-built" system drawings and copies of operational manuals for all installed products and/or equipment.

Safety: Contractor shall be responsible for initiating, maintaining, and supervising all safety programs in connection with this work. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury, or loss to the following:

All employees on the worksite and all other persons who may be affected thereby.

All the work, materials, and equipment to be incorporated therein.

Other properties at the site of, adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor shall post and maintain warning and caution signage in areas where work is ongoing near energized equipment. Contractor shall provide guards for all energized live parts when work is not being done on the equipment, this includes lunch and breaks.

Contractor shall strictly enforce OSHA lock out tag out procedures and follow the latest NFPA 70E safety related work practices. Initial infractions shall result in a warning, additional infractions may result in contract cancellation.

Removal and Disposal: Contractor shall remove from the worksite and dispose of removed lighting fixtures, and ballasts as soon as possible in accordance with current applicable federal, state and local codes. Disposal of lamps shall be the responsibility of the City of Mesa.

Retrofit/Repair of Existing Fixtures, Lamps, and Ballasts: General requirements include the following:

- a) Contractor shall offer lines of replacement fluorescent lamps that contain low-level mercury content, LED alternate lighting solutions of the latest design, or other current alternate energy saving fixture and lighting replacements.
- b) Compact fluorescent lamps (CFL) and LED's shall be available as an alternative for replacement of current lighting. CFL's shall be UL listed and have a minimum rated average life of 10,000 hours. LEDs shall have a minimum two (2) year driver and/or cooling fan and lamp warranty.
- c) Electronic ballasts shall be physically interchangeable with standard magnetic core and coil ballasts.

Lighting Controls: General requirements include the following:

- a) Lighting controls shall include, but not be limited to, occupancy, temperature, remote, automatic, dusk-to-dawn, time, astronomical, etc.
- b) Contractor may provide control systems and solutions that allow member to add future expansion and/or functions.
- c) Lighting control systems shall not interfere, disable, disengage, or conflict in any manner with the City's current facility security, burglar, fire (alarm, suppression, and control), or any other integrated system. Contractor shall not conjoin into these systems in any manner without written approval from the City and the presence of an authorized representative's technician for these systems during the installation and/or system initiation. Failure to comply with this requirement in any manner may be grounds for immediate cancellation of an awarded contract.
- d) Lighting control systems and solutions shall include member training for operation and addition of future expansion and/or functions as applicable.

Materials. The City reserves the right to provide repair parts to the Contractor. The Contractor shall pickup repair parts from the City of Mesa's Parks Maintenance Shop service yard Monday through Friday between the hours of 6:00 a.m. and 1:00 p.m. Request for parts pickup outside of this designation must be made in writing twenty-four (24) hours in advance. No purchases shall be made by the Contractor unless approved by the City representative. The Contractor shall fill out a parts order form for each request listing:

- a) The area part(s) will be used;
- b) Description of part(s) needed;
- c) Date needed; and
- d) Repair person.

The City requires that all parts replaced be retained by the supplier until payment has been received. The City reserves the right to inspect all parts being replaced prior to authorizing reimbursement.

The Contractor will be responsible for the care and maintenance of any equipment issued by the City.

Contractor shall return all un-used parts to the Parks Maintenance Shop after completion of the repair or maintenance.

**EXHIBIT B
PRICING**

Pursuant to all the contract specifications enumerated and described in this Solicitation, Respondent agrees to furnish Electrical Maintenance, Installations and Lighting Repairs to the City of Mesa at the price(s) stated below.

Instructions: Bidder shall provide labor rates, service fees, and percentage off pricing for the various services and materials allowed under this RFP. These include: Low Voltage (less than 600V) and Parks, Basins and Sports Field Lighting Services the major categories as specified in the Scope of Work.

LOW VOLTAGE SERVICES LABOR RATES (PER SCOPE OF WORK)

| Line Item | Title | During Business Hours | After Hours | Weekends / Holidays | Emergency Response Work | Bidder Notes/Comments |
|-----------|-------------------------|-----------------------|------------------|---------------------|-------------------------|-----------------------|
| 1 | Journeyman | \$ 100.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 2 | Journeyman/Leadman | \$ 100.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 3 | Foreman | \$ 90.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 4 | Apprentice | \$ 55.00 | \$ 85.00 | \$ 85.00 | \$ 85.00 | |
| | Line Item Totals | \$ 345.00 | \$ 460.00 | \$ 460.00 | \$ 460.00 | |

LIGHTING MAINTENANCE AND REPAIR RATES (PER SCOPE OF WORK)

| Line Item | Title | During Business Hours | After Hours | Weekends / Holidays | Emergency Response Work | Bidder Notes/Comments |
|-----------|--|-----------------------|------------------|---------------------|-------------------------|-----------------------|
| 5 | Repair/replace lighting elements from 0' to 15' in height/ includes service vehicle | \$ 90.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 6 | Repair/replace lighting elements over 15' to 35' in height/ includes service vehicle | \$ 90.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 7 | Repair/replace lighting elements over 35' to 55' in height/ includes service vehicle | \$ 90.00 | \$ 125.00 | \$ 125.00 | \$ 125.00 | |
| 8 | Repair/replace lighting elements over 55' to 90' in height/ includes service vehicle | \$ 125.00 | \$ 200.00 | \$ 200.00 | \$ 200.00 | |
| | Line Item Totals | \$ 395.00 | \$ 575.00 | \$ 575.00 | \$ 575.00 | |

| | | |
|---|-----------------------------------|-----|
| 9 | PERCENTAGE OFF MATERIALS/SUPPLIES | 25% |
|---|-----------------------------------|-----|

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

DELIVERY: See Mesa Standard Terms and Conditions.

Vendor Name DECA Southwest

Date: 9/23/2024
RFP # 2025005

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to 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 City, Contractor will defend, indemnify, and hold harmless City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of 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 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 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 for any third parties.
6. **NON-EXCLUSIVITY.** 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 writing and signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by 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 City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that City has adopted a policy establishing a drug-free workplace for itself and those doing business with 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 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 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 City.
 - iii. To ensure Contractor and its subcontractors are complying with Contractor Immigration Warranty, 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 City in regard to any random verification performed.
 - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached 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 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 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 City within five (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 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 City, or should otherwise claim City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify City for any tax liability, interest, and penalties imposed upon City.
- b. City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. 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 City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due City or fees and charges owed to City.

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

- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified City pursuant to Mesa Procurement Rules Section 2.1 or notified City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
- b. In the event City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, 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, City may release the information without further notice to Contractor.

13. **AUDITS AND RECORDS.** Pursuant to A.R.S 41-2548 and A.R.S. 32-214, Contractor must preserve the records related to this Agreement for five (5) years after completion of the Agreement. City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, 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 City. The audit of records may occur at Contractor's place of business or at City offices, as determined by City.

14. **BACKGROUND CHECK.** In accordance with City's current background check policies, 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 City's information, data, or facilities. Any officer, employee, or agent who fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** 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 City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from 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:

- 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 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 City's Procurement Rules.

b. **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.

c. **Anticipatory Repudiation.** Whenever City in good faith has reason to question Contractor's intent or ability to perform, 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, City may treat this failure as an anticipatory repudiation of the Agreement entitling 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. 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, City may recover the excess cost by: (i) requiring immediate reimbursement by Contractor to 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 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.** 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, 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 City becomes an employee or agent of Contractor.
 21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If City reasonably determines it does not have funds to meet its obligations under this Agreement, 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, 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. City will make final payment within thirty (30) calendar days after 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 City, its elected officials, agents, representatives and employees (collectively, including 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. 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. City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to City, will provide materials or redo such services until in accordance with this Agreement and to 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 City's right to recover against third parties for any loss, destruction, or damage to City property and will, at City's request and expense, furnish to 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 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 City on an as needed basis, at the sole discretion of City. Any document referencing quantities or performance frequencies represent City's best estimate of current requirements, but will not bind 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 City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of City and will not be used or released by Contractor or any other person except with prior written permission by City.

- 29. **USE OF NAME.** Contractor will not use the name of City of Mesa in any advertising or publicity without obtaining the prior written consent of 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 City from representing another person (including Contractor) before 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 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 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 City to use, the materials and services being provided and that 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 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 attorney's fees awarded against 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 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 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 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 City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the applicable Procurement 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.** 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.

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. 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 City's Procurement Services 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 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.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
HENRY BROS., INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

The method and amount of compensation is in accordance with section 3 of this Agreement.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Statement of Work must not exceed \$1,000,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

The City shall pay contractor compensation in accordance with the rates set forth in the City of Mesa contract No. 2025005, for electrical maintenance, installation and lighting repairs for City-wide parking lots and parks on as-needed basis.