

**MATERIALS AND SERVICE
AGREEMENT BETWEEN
THE CITY OF APACHE JUNCTION AND ROADWAY ELECTRIC LLC
FOR TRAFFIC SIGNAL REPAIR SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and ROADWAY ELECTRIC LLC, an Arizona limited liability company ("Contractor"). Both collectively referred to as "Parties" or individually as a "Party."

RECITALS

A. After a competitive procurement process, the City of Mesa, Arizona ("Mesa") entered into Contract No. 2017135, dated May 1, 2017 (the "Mesa Contract"), for the Contractor to provide traffic signal repair services (the "Work"). A copy of the Mesa Contract is attached hereto as Exhibit A and incorporated herein with this Agreement (the "Contract Documents"), to the extent not inconsistent with this Agreement. If there are inconsistent provisions between the Mesa Agreement and this Agreement, the provisions of this Agreement shall govern.

B. The City and the Contractor desire to set forth herein their respective responsibilities and the manner and terms upon which Contractor shall complete the Work.

C. The City is permitted, under Arizona Revised Statutes, Title 34, and Apache Junction City Code ("A.J.C.C.") Article 3-7, Procurement Procedure, to purchase such materials and services under the Mesa Contract.

AGREEMENT

NOW THEREFORE, City retains Contractor to perform, and Contractor agrees to render the services in accordance the terms and conditions set forth as follows:

TERMS

1. SCOPE OF WORK: This is an indefinite quantity and indefinite delivery Agreement for materials and services under the terms and conditions of the Mesa Contract. The City does not guarantee any minimum or maximum number of purchases will be made.

2. WORK ORDERS: Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the materials and services to the City in such quantities and configurations agreed upon between the Parties, in a written invoice, quote, work order or other form of written agreement describing the work to be completed (each, a "Work Order"). Each Work Order shall contain a reference to the Contract Documents. Work Orders submitted without referencing the Contract Documents will be subject to rejection. Contractor acknowledges and agrees that Work Order(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms the Contract Documents (collectively, "Unauthorized Conditions"), other than City's project-specific requirements, are hereby expressly declared void and shall be of no force and effect. Acceptance by the City of any Work Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement, shall not alter such terms and conditions set forth in this Agreement or under the Mesa Contract, shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement. If the Agreement is renewed pursuant to Subsection 3 below and such renewal includes any Unauthorized Conditions, other than price, those terms will be null and void.

The City reserves the right to cancel Work Orders within a reasonable period of time after issuance. Should a Work Order be canceled, the City agrees to reimburse the Contractor, but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Work Order. The City will not reimburse the Contractor for any costs incurred after receipt of City notice of cancellation, or for lost profits, shipment of product prior to issuance of Work Order, or for anything not expressly permitted pursuant to this Agreement.

3. TERM OF AGREEMENT:

Initial Term

This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until April 30, 2020 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Mesa Contract.

Renewal Terms

After the expiration of the Initial Term, this Agreement may renew automatically for an additional one-year term ("Automatic Renewal Term") in accordance with the Mesa Contract. Thereafter this Agreement may be renewed for up to two successive one-year terms (each, a "Renewal Term") if: (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Mesa Contract has not expired, (iii) at least thirty (30) calendar days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term, and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Mesa Contract), as evidenced by the Mesa city manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement following any then-current term other than the Initial Term shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term, Automatic Renewal Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

4. PAYMENTS & COMPLETION: Prices shall be governed under Exhibit A for the performance of the Work under this Agreement. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual amount not to exceed one hundred thousand dollars (\$100,000) for materials and services as requested through proper Work Order at the unit rates set forth in the Mesa Contract. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed five hundred thousand dollars (\$500,000). Once City finds the Work acceptable under the Contract Documents, City shall promptly submit for processing a certificate or invoice for payment stating that, to the best of its knowledge, information and belief on the basis of its observation and inspection, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that partial payment or the full balance due the Contractor is payable.

5. LABOR AND MATERIALS: Unless otherwise provided in the Contract Documents, Contractor shall provide, pay and insure

under the requisite laws and regulations for all labor, materials, equipment, tools and machinery, utilities, transportation, other facilities and services necessary for the proper execution and completion of the Work whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6. TAXES: Contractor shall pay all license, sales, consumer, use and other similar taxes for the Work or portions thereof provided by Contractor which are legally enacted at the time bids are received whether or not yet effective or subsequently applicable due to acts of jurisdictions or bodies other than City.

7. PERMITS & FEES: Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, government fees, licenses and inspections necessary for the proper execution and completion of Work which are customarily secured after execution of the contract and which are legally required. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. City permits for this Work will be provided to Contractor at no cost. Contractor represents and warrants that any license necessary to perform the Work under this Agreement is current and valid. Contractor understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Contractor agrees to obtain a business license pursuant to Article 8-2 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement and after termination of this Agreement any time Work is performed pursuant to the warranty provisions set forth in Section 6. Contractor also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by the city code. Any activity by subcontractors within the corporate city limits will invoke the same licensing regulations on any subcontractors, and Contractor ensures its subcontractors will obtain any and all applicable licenses. Further, Contractor agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

8. INDEPENDENT CONTRACTOR: Contractor shall at all times during Contractor's performance of the services retain Contractor's status as an independent Contractor. Contractor's employees shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes, or provide workers compensation or unemployment insurance for or on behalf of them or Contractor. Contractor shall supervise and direct the delivery of the materials using its best skill and attention. Except as provided in this Agreement, Contractor shall be solely responsible for all means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work required by the contract documents. Contractor shall be responsible to City for the acts and omissions of its employees.

9. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any tortious claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Contractor's acts, errors, mistakes, omissions, Work or services in the performance of this Agreement including any employee of Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Contractor may be legally liable.

10. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right

or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

11. INSURANCE: Contractor, at its own expense, shall purchase and maintain the minimum insurance and other additional requirements set forth herein.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City constitute a material breach of this Agreement.

Contractor's insurance shall be primary insurance as respect to City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers Compensation, shall contain waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, Work or services.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and City, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of City's right to insist on strict fulfillment of Contractor's obligations under this Agreement.

The insurance policies, except Workers Compensation, required by this Agreement, shall name City, its agent, elected officers, officials and employees as additional insured parties.

REQUIRED COVERAGE

Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011-93 or any replacement thereof. In addition, automobile liability coverage of at least \$1 million per occurrence or a combined single limit of at least \$1,000,000 is required. The auto liability policy should contain endorsements for hired autos, non-owned autos and scheduled vehicles, as applicable to the Contractor's business.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office Inc.'s Additional Insured, Form CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

If required by this Agreement, if Contractor sublets any part of the Work, services or operations, Contractor shall purchase and maintain, at all times during prosecution of the Work, services or operations under this Agreement, City and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's Work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Contractor's General Liability insurance.

Workers Compensation (Not Applicable to Sole Proprietorships).

Contractor shall carry Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the Work or services; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case any Work is subcontracted, Contractor will require subcontractor to provide Workers Compensation and Employer's Liability to at least the same extent as required of Contractor.

CERTIFICATE OF INSURANCE

Prior to commencing Work or services under this Agreement, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by Agreement, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Contractor's Work or services and as evidenced by annual Certificates of Insurance, to be filed with the City Attorney.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City Attorney thirty (30) calendar days prior to the expiration date. All Certificates of Insurance shall be identified with bid serial number and title.

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City Attorney.

12. SUCCESSORS & ASSIGNS: City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the contract documents. Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

13. WRITTEN NOTICE: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity, or to an office of the corporation for whom it was intended or if delivered at or sent registered or certified mail, return receipt requested, and first class postage prepaid to the last business address known to them who gives the notice.

14. SAFETY: Contractor and/or its subcontractors shall be solely responsible for job safety at all times.

15. RIGHTS & REMEDIES: The duties and obligations imposed by the contract documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by City or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any action or failure to act constitute an approval of or an acquiescence to any breaches hereunder except as may be specifically agreed to in writing.

16. TERMINATION OF CONTRACT: If, for any reason, Contractor shall fail to fulfill in a timely and proper manner his/her obligations under the contract, or if Contractor shall violate any of the covenants, agreements, or stipulations of the contract, City shall thereupon have the right to terminate the contract by giving

written notice to Contractor of such termination and specifying the effective date thereof.

Notwithstanding the above, Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any breach of the contract by Contractor.

City may terminate the contract at any time by giving at least twenty-four (24) hours notice in writing to Contractor. If the contract is terminated by City as provided herein, Contractor will be paid for the time expended and expenses incurred up to the termination date.

17. APPEALS: All contractual grievances shall be submitted in writing to City Manager within five (5) calendar days after the difference of opinion or grievance occurs relating to any of the provisions of the terms of this Agreement. Within five (5) calendar days of receiving a written grievance, the City Manager shall respond in writing to the company. The City Manager's decision shall be final and binding, subject only to a further appeal in the Pinal County Superior Court pursuant to A.R.S. § 12-901, et seq.

18. RECORDS: Records of Contractor's labor, payroll and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Contractor shall maintain records for a period of at least three (3) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

19. AMENDMENT: It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that oral understandings or agreements not incorporated herein shall not be binding on the parties.

20. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Contractor and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in

writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the supporting documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

21. SEVERABILITY: City and Contractor each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

22. SUCCESSORS & ASSIGNS: City and Contractor each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the contract documents. Neither Party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to or to become due to it without the previous written consent of City.

23. CONFLICT OF INTEREST: This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

24. PROHIBITION TO CONTRACT WITH CONTRACTORS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Contractors who engage in boycotts of the State of Israel. Should Contractor under this Agreement engage in any such boycott against the State of Israel, this Agreement is automatically terminated. Any such boycott is a material breach of contract and will subject Contractor to monetary damages, including but not limited to, consequential and liquidated damages.

25. COMPLIANCE WITH FEDERAL AND STATE LAWS: Contractor understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor will verify the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Contractor shall not be deemed in material breach of this Agreement if Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Contractor or subcontractor employee who works under this Agreement to ensure that Contractor or subcontractor is complying

with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized representative as of this _____ day of _____, 20____.

CONTRACTOR:

ROADWAY ELECTRIC LLC, an Arizona
limited liability company

Charlton Hale

By: _____

Title: Division Manager

CITY:

CITY OF APACHE JUNCTION, an
Arizona municipal corporation

By: Jeff Serdy

Title: Mayor

ATTEST:

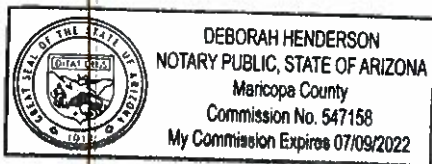
Kathleen Connelly
City Clerk

APPROVED AS TO FORM:

2.2.19
Richard J. Stern
City Attorney

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing was subscribed and sworn to before me this
22nd day of January, 20 19, by Charlton Hale
as Manager of Roadway Electric LLC.



My Commission Expires:

July 9, 2022

Deborah Henderson
Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn before me this _____
day of _____, 20____, by Jeff Serdy, as Mayor of the City
of Apache Junction, Arizona, an Arizona municipal corporation.

My Commission Expires:

Notary Public

1. The first line is a vertical line.

2. The second line is a vertical line.

Exhibit A



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA CONTRACT NUMBER 2017135
TRAFFIC SIGNAL MAINTENANCE SERVICES**

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466
	Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400
	Mesa, AZ 85201
Attention	Brandy Andersen, Procurement Officer
E-Mail	brandy.andersen@mesaaz.gov
Telephone	(480) 644-6426
Facsimile	(480) 644-2655

AND

ROADWAY ELECTRIC, LLC ("Contractor") Primary Contractor

Mailing Address	2002 W. Cheryl Dr.
	Phoenix, AZ 85021
Delivery Address	2002 W. Cheryl Dr.
	Phoenix, AZ 85201
Attention	Charlton Hale, Division Manager
E-Mail	chic@roadwayelectric.com
Telephone	602-943-8300
Facsimile	602-943-8305

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 18th day of April, 2017, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Roadway Electric, LLC, an Arizona company ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2017135** ("Solicitation") for **TRAFFIC SIGNAL MAINTENANCE** to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term.** This Agreement is for a term beginning on **May 1, 2017** and ending on **April 30, 2020**. 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) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes.** Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work.** The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.
3. **Orders.** Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

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

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

5. **Payment.**

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

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

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

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

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

During the 60-day period prior to 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. 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, pricing of each unit, and freight charges (as applicable);
- i. Applicable Taxes
- j. Total amount due.

5.6 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Otherwise; payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

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 prior to the execution of the Agreement and remain in effect for the term of the Agreement.

- 6.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, 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 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 receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;

- b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- o (A) Scope of Work
 - o (B) Pricing
 - o (C) Mesa Standard Terms and Conditions
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

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

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

CITY OF MESA, ARIZONA

By: _____

Printed Name _____

Title _____

Date _____

REVIEWED BY:

By: S. Anderson

ROADWAY ELECTRIC, LLC

By: [Signature]

Charlton Hale
Printed Name

Dir. & GE
Title

4-17-17
Date

**EXHIBIT A
SCOPE OF WORK**

1. **SCOPE OF WORK:** This contract is for the maintenance, modification, and installation, of the City's Intelligent Transportation System (ITS) Traffic Signals and related ITS equipment. Work will be accomplished throughout the City on an as needed, where needed basis. Work will consist of but not be limited to: foundation installation/removal, light and/signal pole installation/removal, arm and head installation/removal, trenching, boring, conduit/wire/cable installation/removal, pull box/vault installation/removal, barricade set up, saw cutting, etc.

The City will utilize the most current version of the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works www.azmag.gov/Documents/2012%20Specifications%20and%20Details%20Book.pdf and/or City of Mesa Standards and Specifications [City of Mesa: Mesa Standard Details & Specifications](#) for inspection and quality assurance of all work performed under this agreement.

Contractor will be responsible for ensuring all workmanship, equipment, and site preparation meets or exceeds these requirements. The authorized City Representative will inspect all phases of work and any unsatisfactory work or preparation will be redone at no additional cost to the City. The City Representative must give the Contractor approval prior to continuing onto the next work site or project phase.

Upon contract award, the City will issue a Notice to Proceed (NTP) listing the various locations that services will be performed within the City.

2. **GENERAL SPECIFICATIONS:** Unit bid price will cover all items, other than those supplied by the City, needed to complete the described work including but not limited to: labor, tools, equipment, and incidental materials. Contractor will install all equipment and materials in accordance with the City of Mesa Standard Details referenced in this document. If a specific standard detail is not referenced, it is understood that all work requested under this agreement will always be completed in accordance with City of Mesa Standard Details which pertain to the particular work.
3. **CONTRACTOR'S PERFORMANCE:** The Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the require services at the designated City facilities. The City's authorized representative will decide all questions arising as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have seven (7) calendar days to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City will have the immediate right to complete the work to its satisfaction and shall deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.
4. **LICENSES AND PERMITS:** Bidder shall possess all valid certifications and/or licenses as required by federal, state, and local laws at the time of bid submittal and throughout the contract term. As required by the Arizona Registrar of Contractors, Contractors will be properly licensed before submitting bids. Contractor, at its expense, will obtain all permits required for performing work under this agreement.

A dust control permit may be required by the Maricopa County Environmental Service Department. Contractor will be responsible for obtaining this permit, if necessary, and comply with its requirements. The Contractor will provide a copy of a dust control plan for work under this agreement, to the City Representative prior to beginning any work, if a permit is needed
5. **BLUE STAKE:** Contractor is responsible for calling all its Blue Stake requests prior to any excavation and shall comply with the Arizona Blue Stake Law. All necessary blue staking will be the Contractors' responsibility. Blue stake log numbers will be supplied to the City Representative prior to the start of a project or phase or as otherwise directed.

6. **EMPLOYEE CERTIFICATION/QUALIFICATIONS:** The City requires at least one (1) International Municipal Signal Association (IMSA) Level I and one (1) Level II certified signal technician on site during all phases of any traffic signal work; however, it is acceptable for Contractor to have two (2) level II's instead. Contractor will be responsible for providing verification of certification prior to beginning any work. If a job site is inspected and the City approved certified technicians are not on site, the job shall be shut down. Employees will be active, qualified, full time employees. They will not be "borrowed", temporary or contract employees employed for the sole purpose of satisfying the IMSA employee certification requirements.

Prior to the start of any construction, Contractor will submit to the ITS Operations Foreman or his representative, a list containing names and qualified status of personnel that will be on the immediate job site. Any changes to this list shall require immediate notification to the ITS Operations Foreman or his representative.

7. **SUPPLY OF MATERIALS BY THE CITY:** The City of Mesa ITS Group will supply specified materials as necessary to complete the work and the Contractor will utilize these materials that are detailed in the specifications contained herein. **The City will supply: poles, anchor bolts, "sono tube" concrete form material, arms, signal heads, pushbutton assemblies, luminaries, mounts, wire, cable, fiber optic cable, conduit, conduit fittings, PVC cement, pull boxes, vaults, concrete, crushed pull box rock, service pedestals, control cabinets, cameras, video detection equipment, antennas, Opticom sensors, speedcrete, and framework mounting bolts.** Materials supplied by the City will be used solely for work under this agreement and the Contractor will not substitute different materials unless authorized by the Inspector. The City will not supply nor pay for, incidental materials, supplies and services such as perishables, sealants, duct seal, loop sealant, personal protective equipment, cold mix, etc.

Contractor will include the cost for all incidental materials, supplies and services in the unit bid prices. Contractor will arrange for all supplies and material delivery and or pickup and to order sufficient materials for the assigned work.

Contractor will be responsible for obtaining and providing a copy of all material tickets to the City Inspector if the Contractor picks materials up directly from a City supplier. All material tickets will be complete including: description, quantity, receipt date and the Contractor signature.

The City will designate the location for material pick-up and return. When material is returned such as signal/light poles, mast arms, signal heads and framework, these items will be determined for scrap or re-use. The Contractor will be responsible for placing the signal/light pole, mast arm, signal heads or framework in the designated location. Scrap items such as poles and arms will be cut to no longer than twenty (20) foot in length and set into recycle containers located in designated locations at the East Mesa Service Center located at 6935 E. Decatur, Mesa, AZ 85207.

8. **MATERIAL REQUESTS:** Contractor material requests will be submitted a minimum of twenty-four (24) hours prior to material pick-up, unless circumstances dictate differently (larger material orders will require more time) and are agreed to by the Inspector. Unless approved in advance by the City Inspector, the Contractor will pick up all materials between the hours of 7:00 AM and 8:30 AM or 3:00 PM to 4:00 PM Monday-Thursday, unless otherwise arranged with the Inspector. Materials will be picked up from either the City's west maintenance yard, the east maintenance yard, or the warehouse(s). Addresses are as follows: 6935 E. Decatur, Mesa, AZ 85207 and 300 E. 6th St. Mesa, AZ 85201. All material will be counted and inspected jointly by the City Inspector and Contractor when pick-up is made. The City Inspector will strictly monitor material usage, and material usage by the Contractor will correspond to the work performed.

Contractor will provide for secure storage of materials and equipment. No equipment or materials shall be stored on City property unless prior approval has been received from the City Inspector. Loss or damage to materials after they have been issued will be the responsibility of the Contractor. Any loss, damaged or misuse of materials provided by the City to the Contractor will be replaced by the Contractor with the exact quantity and quality item at no cost to the City.

Contractor access to City traffic signal offices and yards is strictly limited to the regular work hours of the ITS Operations Group and only with prior permission of Traffic Signal personnel.

9. **WORK CREW SUPERVISION:** Contractor will provide qualified supervision of each crew all times while performing work under this contract. Each supervisor will be able to converse in the English language, and shall be authorized by the Contractor to accept and act upon all directives issued by the City. Failure of the supervisor to act on said directives will be sufficient cause to give notice that the Contractor is in default of the Contract unless such directives would create potential personal injury or safety hazards, or are contrary to the intent of these specifications.

Contractor will provide a cellular telephone for the supervisor and/or foreman. Contractor will be responsible for payment of all charges relating to its use. All communication equipment will be kept in proper working condition all times.

10. **SAFETY:** Employees of the Contractor will use reasonable safety procedures while working on projects under this agreement and follow all OSHA regulations. Reasonable safety procedures will include, but not be limited to the use of: safety hats, gloves, goggles, reflective vests, respirators, protective footwear, and a safety harness while working in an aerial lift. Contractor will adhere to all regulations, rules, ordinances, and standards set forth by Federal, State, County, and City of Mesa governments when providing these services. Contractor will be responsible for the training and instruction of all workers, employees and subcontractors on all required job safety standards and traffic safety. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures and other activities used to ensure compliance. Contractor will notify the City, in writing, whenever any violation, citation or warning is received for noncompliance in any safety or health related issue while providing services under this contract.

11. **DESIGNATED PERSON:** Contractor will employ a "designated" person who will be responsible for ensuring that all barricades, signs, warning lights, signals, and other traffic control devices are established and maintained in strict compliance with the City of Mesa Traffic Barricade Manual, the MUTCD, and the specifications contained herein. This designated person will have completed training and be certified in temporary traffic control by the American Traffic Safety Services Association (ATSSA) or the International Municipal Signal Association (IMSA). Proof of certification shall be submitted prior to receiving Notice to Proceed and shall be available at the work site.

The designated person will:

- Maintain all barricading and traffic control devices in compliance with the Traffic Barricade Manual and the MUTCD and submit a daily (including weekends and holidays) report, in writing, to the City Inspector of maintenance activities the next workday.
- Ensure that traffic signals within the project limits do not conflict with barricades and signs or give misleading indications to pedestrians and motorists. He/she will immediately bring conflicting conditions to the attention of the City Inspector. The City Inspector will coordinate with Mesa's Intelligent Transportation Systems (ITS) Group (480-644-2160) for any required changes to Mesa operated traffic signal sequencing, timing or outages. The designated person will make arrangements with any entity having ownership or responsibility of traffic signals that are not City owned or operated to ensure that there are no conflicts with barricades and signs and that signals do not provide misleading indications to pedestrians and motorists;
- Ensure that flagmen, when employed, are trained in accordance with O.S.H.A. regulation (29 CFR 1926.201 Signaling); and have completed training and are certified by a program that meets the training and certification standards of the National Safety Council Highway Flagger Training Program, the ATSSA flagger program or an equivalent program that meets the same objectives, such as IMSA certification. Proof of certification will be submitted prior to the flagmen beginning work and shall be available at the work site; and,

Immediately respond to all call-outs by the City Inspector, the stand-by City Inspector, the Traffic Barricade Coordinator, or Base Operations; cooperate with Police or Fire Department Investigators; and, re-establish barricades and traffic control devices, as necessary, at no additional cost to the City.

12. **STOP WORK:** The City reserves the right to stop work under this agreement at any time for reasons including, but not limited to:

- o Weather conditions become adverse
- o Environmental Protection Agency Particulate Matter ("PM10") days
- o Work quality is not acceptable
- o Other conflicts in Contractor equipment or personnel cause delays in getting work completed.
- o Work schedule/location conflicts with other City activities
- o Other conditions exist which, in the opinion of the city, could affect the safety or quality of work under this agreement
- o Improper barricading

13. **ORDERING WORK AND WORK SCHEDULE:** The City will notify the Contractor in writing when a set of plans specifying the installation area or work is required. There are times when the written work request is sufficient.

It is expected that the Contractor follow this process for scheduling of work:

- After receiving Notice to Proceed on a project for a specific work item, Contractor will acknowledge receipt of the work within forty-eight (48) hours. Prior to beginning any work, Contractor will schedule a project walk with the City's representative (This project walk is to occur within seven (7) days of receiving the notice to proceed.
- Upon completion of the project walk and understanding of the work to be done, the Contractor will submit a proposed schedule of work to the City Inspector within forty-eight (48) hours of the project walk.
- Work should start in the area no later than seven (7) days after the work schedule is approved by the City. In any case once the Notice to Proceed has been issued, Contractor will commence work within fourteen (14) days of the project walk and work continuously on a five (5) day work week schedule (Monday-Friday) until assigned work is complete. Any changes to the established schedule will have prior approval by the City Inspector/Project Manager. Work under this Contract will not be performed on days recognized as a legal holiday by the City or on weekends (Saturday and Sunday) unless pre-approved by the City Inspector/Project Manager.
- It should be noted that the City reserves the right to change the priority of projects issued based on urgency of projects that arise. The City will make every effort to work with the Contractor when this occurs but it will be expected that the Contractor be accommodating.

14. **WORK AREA AND JOB SITE SAFETY:** Contractor will clean up the work area and maintain a safe work site during and after construction, until accepted by the City, and will do all work and pay all cost incidental thereto.

Contractor will, upon completion of the work, remove temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item and is to be included in the unit bid price(s). Contractor will restore any damaged City property or private property (including but not limited to landscaping and irrigation systems) to its original condition as determined by the City Inspector.

Contractor will adequately barricade and secure all trenches, bore pits, foundations and any other work area hazard. No dirt from a trench or pit excavation shall be placed on the roadway, shoulders or sidewalks. All equipment and stockpiled dirt will meet the safety clear zones distances or have adequate barricades and warning devices to protect the traveling public. Topsoil and/or granite will be kept separate from the other excavation material and replaced accordingly. All pits and trenches

will be kept dry and free from standing water. If any trenches and /or pits are left open for extended periods of time without a continuous progression of work, Contractor may be required to backfill the trenches and/or pits. Upon request of the City Inspector, all pits, trenches, and utility pot holes within roadways will be steel plated at the Contractor's expense. Silt from saw cutting operations will be cleaned or flushed from the roadway as to leave the roadway clean, all striping will be visible and safe for motorists. All newly poured traffic signal foundations will be protected with a Type I or II barricade with light.

Excess or unsuitable material, including broken asphaltic concrete, Portland cement concrete, and soil excavated will be removed from the project and disposed of by the Contractor. Contractor will at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the work, the Contractor will remove all equipment, tools, and surplus materials, and will completely clean the premises, leaving it in a safe condition for workers and/or the public at the end of each work day. Contractor will remove and dispose of all debris and rubbish, and clean all stains, spots, marks, dirt, smears, etc. When work premises are turned over to the City, they will be thoroughly clean and ready for immediate use, eliminating any possible safety hazards. The Contractor will provide for the legal disposal of all waste products, debris, etc. and will make necessary arrangements for such disposal and all associated costs will be included in the unit bid prices.

Contractor will be responsible for providing and for the placement of barricade, tarps, plastic, flag tape and any other safety/traffic control equipment, within their work sites, required to protect its employees, the public, surrounding areas, equipment and vehicles.

Contractor will notify the City, in writing, whenever any violation, citation or warning is received for noncompliance in any safety or health related issue while providing services under this contract.

15. **INSPECTIONS:** Contractor will request an inspection of the layout or work schedule by the City Inspector. Inspection requests will be submitted twenty-four (24) hours in advance, unless circumstances dictate differently and are agreed to by the Inspector.

Typical examples include but are not limited to:

- Trench and Conduit inspection
- Pre-Pull Box Installation
- Foundation Inspections prior to concrete placement
- Oversee concrete placement
- Pole drilling layout inspection
- Mandrelling of communications conduits
- Final inspection by the City Inspector

City Inspector approves the installation or identifies any corrective action required by the Contractor.

Contractor completes any corrective work, receives final inspection from the City.

16. **TRAFFIC CONTROL AND BARRICADES:** Contractor will be responsible for complying with the current City of Phoenix Traffic Barricade Manual and the City of Mesa Supplement to the City of Phoenix Traffic Barricade Manual and the current Manual on Uniform Traffic Control Devices (MUTCD).

All signs, cones, traffic control devices, and equipment necessary for the control of traffic will be furnished by the Contractor in accordance with the City of Mesa Traffic Barricade Manual and the MUTCD. All traffic control devices must be compliant with the AASHTO Manual for Assessing Safety Hardware "MASH". Traffic control devices already certified under the National Cooperative Highway Research Program (NCHRP) Report 350, are accepted.
http://safety.fhwa.dot.gov/roadway_dept/policy_guide/road_hardware/nchrp_350/

17. **TEMPORARY TRAFFIC CONTROL (TTC) PERMIT:** Contractor will obtain a Temporary Traffic Control (TTC) Permit from the City Transportation Department prior to restricting or closing any street, sidewalk, pedestrian pathway or alley within the City. Individual approval is needed for each unique traffic control configuration. This can be done with multiple Traffic Control Permits or with one (1) permit under which multiple configurations are defined and approved. There is no fee for Temporary Traffic Control Permits for this project.

Contractor will submit a traffic control plan for review for all projects allowed to have traffic restrictions, showing placement of all traffic control devices and proposed temporary striping during all phases of construction, including all conflicting signs to be covered/removed or relocated, or other features that may conflict with the placement of temporary signage. This plan will be professionally drawn and will be submitted to the City (through the standard Shop Drawing submittal process) no later than fourteen (14) calendar days prior to the Notice to Proceed and fourteen (14) calendar days prior to proposed changes thereto.

18. **CITIZEN NOTIFICATION, COMPLAINTS OR CONCERNS:** Contractor will notify all residents, apartment managers and businesses by handbill forty-eight (48) to seventy-two (72) hours in advance of any street restriction that will affect access to their property or place of business. The handbill will include the month (non-numeric), dates expected for the restrictions and the City's project inspector's office phone number.

Contractor will leave a notice at the residence immediately adjacent to the assigned construction or repair. This notice will explain the Contract work being performed for the City and that any complaints should be directed to the Contractor. If the Contractor is unable to resolve the problem, the citizen should be referred to the City Inspector.

Contractor will respond to all Customers/Citizen calls or complaints resulting directly or indirectly from this project within two (2) hours of receipt, and will resolve any issue within forty-eight (48) hours.

The cost for Citizen Notification and responding to customer concerns and complaints will be done at no additional cost to the City.

19. **ADVANCE PUBLIC NOTICE:** Unless an alternative is approved in the TTC permit, advance notice to the public via Portable Changeable Message Signs (PCMS) will be required for the following situations with the indicated minimum duration of advance notice shown:

- Full street closure – Minimum of seven (7) full calendar day's advance notice.
- Peak hour reduction in through lanes on arterial and/or collector streets – Minimum of seven (7) full calendar day's advance notice
- Left-turn prohibitions at signalized intersections of arterial and/or collector streets – Minimum of three (3) full calendar day's advance notice.

Advance notice via PCMS may be required in other situations as determined solely by the City.

The PCMS's will be placed at both ends of the project and at adjoining arterial and collector roadways. Unless otherwise determined by the City, the PCMS's will be removed forty-eight (48) hours after the indicated traffic restrictions have commenced.

Use of static signs for advance notice may be feasible in limited situations. Use of static signs will be approved in advance in the TTC permit.

20. **RESTRICTIONS AND CLOSURES – GENERAL:** Any equipment and material not actively being used to prosecute the work will not be stored in the right-of-way unless otherwise approved by the City Inspector. Roadway and sidewalk restrictions and closures are limited to construction activities and will not be permitted for the purpose of staging or storing equipment or debris.

Restrictions and closures are permitted when necessary considering impact to the traveling public, safety and efficiency. Restrictions will not be in place when work activities are not being performed. Restrictions will not be left in place simply for the convenience or to avoid the need to remove barricades at the end of the work shift and reset them the following day. Restrictions will not be left

solely in place to accommodate storage equipment, supplies, debris, etc. Excavations will be covered with steel plates or backfilled and the lanes opened to traffic at the end of the work day unless it is not feasible to do, as determined solely by the City.

No flagging of traffic will be permitted on arterial or mid-section collector streets unless approved by the TTC Permit.

Unless otherwise specified in the "Special Traffic Regulations" subsection below, the following general requirements from the Traffic Barricade Manual will apply:

- Traffic restrictions will not be permitted on Major/Collector streets during the peak traffic hours of 6:30 am to 8:30 am and 4:00 pm to 6:00 pm weekdays.
- During off-peak hours, the following number of through lanes will be kept open to traffic.
- If more than four (4) lanes exist – four (4) lanes (two (2) lanes each way) will remain open to traffic.
- If four (4) or fewer lanes exist – two (2) lanes (one (1) lane each way) will remain open to traffic
- On one-way streets – One (1) lane will remain open

The restrictions discussed in this section will be used only for the active execution of the work and restrictions will not be in place unless necessary to execute the work.

21. **SPECIAL TRAFFIC REGULATIONS:** Unless otherwise determined by the City, traffic lane restrictions for the Job Order will comply with the specific criteria outlined in the JOB order.

If the requirements of this "Special Traffic Regulations" subsection conflict with the requirements of the "Restrictions and Closures-General" subsection, the provisions of the "Special Traffic Regulations" subsection shall govern.

22. **LOCAL ACCESS REQUIREMENTS:** Contractor will maintain local access to all properties on all side streets, access roads, driveways, alleys, and parking lots at all times unless otherwise approved by the City Inspector, and will notify the residents a minimum of twenty-four (24) hours in advance of any restrictions which will affect their access. When local access cannot be maintained, Contractor will provide satisfactory justification to the City Inspector. Contractor will be responsible for notifying the affected property owner, resident or tenant a minimum of seventy-two (72) hours in advance when local access cannot be maintained. The reasons for the restricted access will be explained to the affected person(s). Alternative access procedures will also be explained. The Contractor will restore full access as soon as possible or as determined by the City Inspector. Area traffic circulation will be maintained when any local street restrictions are imposed.

Local access will be maintained at all times on frontage roads. Frontage roads will be used for through traffic, equipment parking, material storage, or spoil stockpile area. Frontage roads will follow the same notification requirements as described above.

23. **VERTICAL PAVEMENT DROPS:** Vertical pavement drops occur along edges of milled areas. Vertical drops will not exceed one (1) inch at driveways, street intersections, between adjacent traffic lanes including turning lanes, and other locations where traffic will drive over the drops, except at single family driveways on local streets where the vertical drop shall not exceed one-and-one-quarter (1.25) inch. Before traffic is allowed in these areas, asphalt ramps will be installed at any such vertical drop to provide an acceptable riding surface suitable for all vehicles, including passenger cars, trucks, motorcycles, and bicycles. At driveways, the ramps will be in place across the entire width of the driveways, including the wings. At intersections of driveways with radius type returns, the ramps will be in place for the entire distance between radius points.
24. **BUSINESS ACCESS REQUIREMENTS:** Access will be maintained to adjacent businesses at all times in a manner acceptable to the City Inspector. Any business access restrictions will be coordinated with the affected business, in writing, at least forty-eight (48) hours prior but not earlier than one (1) week prior to imposing restrictions unless otherwise approved by the City Inspector.
25. **FIRE, POLICE, HOSPITAL, PARKS AND CHURCH ACCESS REQUIREMENTS:** Access to fire stations, police stations, hospitals, City parks and churches will be maintained at all times unless

otherwise approved by the City Inspector. When access restrictions are necessary, Contractor will notify and coordinate such access restrictions with the responsible person in charge of the hospitals, churches, and City parks and will restore access as soon as possible or as directed by the City Inspector. Contractor will maintain the emergency entrance to all hospitals by way of a paved lane for emergency vehicles at all times for the duration of the project. The contact information for these is as follows:

Fire Station access: Mesa Fire Department (480-644-3388 or 480-644-2405)
Police Station access: Mesa Police Department (480-644-2211 or 480-644-4054)
Hospital access: Hospital Administrators
City Parks access: Mesa Parks Supervisors (east of Gilbert Road call 480-644-3238;
west of Gilbert Road call 480-644-3097)
Church access: Church clergy

26. **PEDESTRIAN ACCESS REGULATIONS – GENERAL:** Contractor will ensure that all sidewalks on this project remain open and safely usable at all times, or will provide alternative pedestrian access per the Traffic Barricade Manual, Americans with Disabilities Act (ADA) and the MUTCD. When pedestrian routes need to be temporarily relocated, the relocated routes will be maintained on the same side of the street as the original route, unless otherwise approved in the TTC Permit. If a traffic lane on a major street is used for a temporary pedestrian route, pedestrians will be separate from traffic. This separation will be accomplished by temporary traffic barriers or longitudinal channelizing barricades unless an alternate method is approved in the Temporary Traffic Control Permit.
27. **TRANSIT STOP REQUIREMENTS:** Contractor will maintain all existing transit stop locations per the Traffic Barricade Manual or provide alternate transit stop locations as required by the TTC. Contractor will notify the City Transit Coordinator (480-644-4131) through the City Inspector, at least seven (7) days prior to any bus stops relocations or access restrictions.

When construction activities require that transit services are rerouted, detoured, or when multiple stop locations on the same route are affected, a notification will be submitted to the City Transit Coordinator fourteen (14) calendar days prior to the change in service of the route. The Contractor will be responsible for posting route modification information at the individual stop locations seven (7) days in advance of the beginning of the detour. A template of the route modification notice may be obtained from the City of Mesa Transit Coordinator. The Contractor will be responsible for removing all route modification notices once the route has been restored to normal operations or is no longer needed. Construction activities affecting public transit will be coordinated with Valley Metro RPTA.
28. **SCHOOL ZONE REQUIREMENTS:** Contractor will provide safe school zones, crosswalks and walkways for students attending nearby schools during all hours of school unless otherwise approved in the TTC Permit. If an existing school bus route is impacted by the Project, the Contractor will notify the school Principal and the school Transportation Director at least seven (7) calendar days prior to the work. The Contractor will restore unrestricted access as soon as possible or as directed by the City Inspector.
29. **SPECIAL EVENT REQUIREMENTS:** When special events are scheduled to take place within or adjacent to the project during the construction of the project, the Contractor will coordinate and schedule his work to mitigate any impact to the event at no additional cost to the City.
30. **SOLID WASTE COLLECTION REQUIREMENTS:** The Contractor will ensure sanitation pick-up is not affected by relocating trash containers, or by providing alternate measures acceptable to the Environmental Management and Sustainability Department (480-644-2221).
31. **SIGNING AND PAVEMENT MARKING REQUIREMENTS:** Contractor will be responsible for maintaining the necessary traffic control devices until the area where treatment has been applied has been re-striped and re-signed. Coordination of re-striping and re-signing will be handled by the City Inspector. Contractor, through the City Inspector, will notify the Transportation Department (480-644-2160) at least seven (7) days prior to the time the roadway signing and striping is scheduled. No additional payment will be made to the Contractor for this coordination. Unless

otherwise specified on the Plans or in these specifications, re-striping and re-signing will be the responsibility of Contractor and the cost thereof included in appropriate bid items on the bid schedule.

32. **EMERGENCY MOBILIZATION:** There may be occasions when the City needs work to begin immediately within twenty-four (24) hours (short notice) of the Contractor being notified. Examples of this would be catastrophic damage from natural causes, vehicle damage, including but not limited to: damage to ITS poles, arms, heads & related infrastructure.

Contractor is to provide the City with a twenty-four emergency contact phone number that will be staffed at all time when the Contractor is performing work under this agreement.

33. **COORDINATION:** Contractor will coordinate and schedule work with other Contractors in the vicinity to avoid conflicts, ensure compatibility of traffic controls, avoid duplication of signing, and minimize disruption.

34. **MISCELLANEOUS LABOR:** Miscellaneous labor may be used if deemed necessary to cover anticipated tasks or situations only with prior arrangements and agreements with Contractor and City Inspector.

35. **WARRANTY:** The Contractor will guarantee all workmanship for a period of one (1) year from the date of acceptance by the City Inspector.

36. **WORKMANSHIP:** Where not more specifically described in any of the various sections of these specifications, workmanship will conform to all methods of operations of best standards and accepted practices of the trade or trades involved, and will include all items of fabrication, construction or installation regularly furnished or required for completion of the services. All work will be executed by personnel skilled in their respective lines of work.

37. **PERFORMANCE INTERFERENCE:** Contractor will notify the department contact immediately of any occurrence and/or condition interfering with the full performance of the contract, and confirm in writing within twenty-four (24) hours.

38. **PAYMENT:** Except as otherwise noted within this section, barricades, traffic control devices, salaries, and other work or materials required to perform work under this agreement are non-pay items. Per MAG Section 101, a non-pay item is an item of work for which no separate payment will be made, the cost of which is to be included as an incidental cost for associated item(s) included on the pricing sheet.

39. **INVOICES:** All work performed by the Contractor will be inspected and approved by the City Inspector prior to processing any pay request. Payment will be based on unit price bid and total quantity of each bid item satisfactorily completed and/or measured jointly by the City Inspector and the Contractor (to the nearest whole unit using conventional rounding methods). Any questions relating to measurements or quantities will be resolved prior to invoice submittal. All efforts will be made by the City to make payment for approved work within thirty (30) business days after invoices are submitted to accounting. Invoice processing will commence upon project completion and will follow the process below:

Contractor's field representative and City's field representative will walk the project within three (3) business days of project completion and agree to the quantities.

The City will then issue an Authorization to Invoice (ATI) which will list quantities, descriptions and contract pricing.

The Contractor will review the ATI against the field walk quantities. If there is any discrepancy, the Contractor will contact the City's field Representative to resolve and ask to reissue the ATI with the adjusted quantities.

If the ATI is accurate, the Contractor will submit their invoice and the ATI with project name and Master Agreement number to the City within three (3) business days to request payment. Unit prices for each bid item will include any and all labor, equipment, clean up, loading, hauling, citizen

notifications, disposal, hand tools, surcharges, miscellaneous equipment or activities necessary as well as barricading costs that is required to complete the work under this contract.

**EXHIBIT B
PRICING**

SECTION 1: TRENCHING, BORING AND CONDUIT					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
1	Machine trench 24" to 36" deep, extend or install up to 3" PVC conduit, backfill and machine tamp (includes multiple conduits in same trench)	700	\$15.00	LF	\$10,500.00
2	Machine trench 48" deep, extend or install up to 3" PVC conduit, backfill and machine tamp (includes multiple conduits in same trench)	600	\$16.00	LF	\$9,600.00
3	Hand trench 24" to 36" deep, extend or install up to 3" PVC conduit, backfill and machine tamp (includes multiple conduits in same trench)	1,200	\$35.00	LF	\$42,000.00
4	Hand trench 48" deep, extend or install up to 3" PVC conduit, backfill and machine tamp (includes multiple conduits in same trench)	200	\$35.00	LF	\$7,000.00
5	Machine trench 48" deep, extend or install 4- 2" Quad Duct (with 1" locating duct) PVC conduits, backfill and machine tamp (M-66 Series: e.g. M-66.07.1, M-66.07.2, M-66.07.3, M-66.07.4, M-66.07.5 and M-90 Series)	100	\$26.00	LF	\$2,600.00
6	Hand trench 48" deep, extend or install 4-2" Quad Duct (with 1" locating duct) PVC conduits, backfill and machine tamp (M-66 Series: e.g. M-66.07.1, M-66.07.2, M-66.07.3, M-66.07.4, M-66.07.5 and M-90 Series)	50	\$37.00	LF	\$1,850.00

7	Guided Bore and install up to 3-inch conduit, 36" to 48" deep, (including boring pit if necessary)	1,500	\$30.00	LF	\$45,000.00
8	Price for each additional conduit installed during the same bore in item 7 above	200	\$2.50	LF	\$500.00
9	Guided Bore and install 4-2" Quad Duct conduits (with 1" locating duct) (M-66 Series: e.g. M-66.07.1, M-66.07.2, M-66.07.3, M-66.07.4, M-66.07.5 and M-90 Series)	1,000	\$38.00	LF	\$38,000.00
10	Guided bore and install 4x18mm bundled micro-duct. (M-66 Series: e.g. M-66.08.2, M-66.08.3, M-66.08.4 and M-90 Series)	1,000	\$36.00	LF	\$36,000.00
11	Install wires and cables (IMSA 19-1 Signal cables and other wire) includes all terminations and splicing in pull boxes, mounts, etc.)	20,000	\$3.25	LF	\$65,000.00
12	Remove multiple wires and cables in one conduit	8,000	\$1.25	LF	\$10,000.00
13	Proof existing conduit (mandrel) then install Fiber Optic Cable (up to 12 strand) and 1-#12 locator wire (0-500').	2,000	\$1.50	LF	\$3,000.00

14	Proof existing conduit (mandrel) then install Fiber Optic Cable (up to 12 strand) and 1- #12-locator wire. Fiber installed over 500' shall be tested with an OTDR before and after installation.	2,000	\$2.10	LF	\$4,200.00
Section 1 Subtotal Items 1-14					\$275,250.00

SECTION 2: PULL BOXES AND VAULTS					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
15	Install pull box or replace existing pull box: # 5 1/2 (M-93.01)	10	\$335.00	Each	\$3,350.00
16	Install pull box or replace existing pull box: # 7 (M-93.01)	30	\$375.00	Each	\$11,250.00
17	Install pull box or replace existing pull box: # 8 (M-93.01)	15	\$555.00	Each	\$8,325.00
18	Install pull box or replace existing pull box: # 9 (M-93.01, M-66 Series: e.g. M-66.07.1, M-66.07.2, M-66.07.3, M-66.07.4, M-66.07.5, M-66.08.1, M-66.08.2, M-66.08.3, M-66-.08.4	5	\$835.00	Each	\$4,175.00
19	Install pull box or replace existing pull box: # 9 Deep Box (48") (M-93.01, M-66 Series: e.g. M-66.07.1, M-66.07.2, M-66.07.3, M-66.07.4, M-66.07.5, M-66.08.1, M-66.08.2, M-66.08.3, M-66-.08.4	5	\$835.00	Each	\$4,175.00

20	Install vault or replace existing vault or pull box, 4'x4'x4', in dirt or landscaped area (M-66 Series: e.g. M-66.01 through M-66.08.4)	1	\$835.00	Each	\$835.00
21	Install vault or replace existing vault or pull box, 4'x4'x4', in asphalt (M-66 Series: e.g. M-66.01 through M-66.08.4)	1	\$1,895.00	Each	\$1,895.00
22	Remove pull box, backfill and machine tamp: # 3 1/2 or # 5 1/2	1	\$185.00	Each	\$185.00
23	Remove pull box, backfill and machine tamp: # 7 or # 8	1	\$410.00	Each	\$410.00
24	Remove pull box, backfill and machine tamp: # 9	1	\$665.00	Each	\$665.00
25	Remove pull box, backfill and machine tamp: # 9 (48" deep box)	1	\$665.00	Each	\$665.00
26	Remove existing vault or pull box, 4'x4'x4', in dirt or landscaped area (M-66 Series: e.g. M-66.01 through M-66.08.4)	1	\$1,150.00	Each	\$1,150.00
27	Remove existing vault or pull box, 4'x4'x4', in asphalt (M-66 Series: e.g. M-66.01 through M-66.08.4)	1	\$2,250.00	Each	\$2,250.00
Section 2 Subtotal Items: 15-27					\$39,330.00

SECTION 3: FOUNDATIONS					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
28	Install Pedestrian Push Button ("PPB") or Bicycle Push Button ("BPB") Pole Foundation (M-94.01)	50	\$410.00	Each	\$20,500.00
29	Install "A" Pole Foundation (M94.03)	40	\$485.00	Each	\$19,400.00

30	Install "J", "K", "Q", "R" or "ITS" pole Foundation (M-94.05, M-94.06)	30	\$660.00	Each	\$19,800.00
31	Install "L" or "S" Pole Foundation (M-94.05, M-94.06)	2	\$1,220.00	Each	\$2,440.00
32	Install 2' x 5' Streetlight Foundation (F-106, includes foundation cap, (M-76.01)	1	\$515.00	Each	\$515.00
33	Install 2' x 6' Streetlight Foundation (F-104, includes foundation cap, (M-76.01)	1	\$590.00	Each	\$590.00
34	Install 3' x 6' Streetlight Foundation (F-103, includes foundation cap, (M-76.01)	1	\$590.00	Each	\$590.00
35	Install 3' x 8' Streetlight Foundation (F-101, includes foundation cap, (M-76.01)	1	\$665.00	Each	\$665.00
36	Install Traffic Signal Cabinet Type V Foundation and porch slab	10	\$890.00	Each	\$8,900.00
37	Install Traffic Signal Cabinet ATC Cabinet Foundation (M-92.01) and porch slab	10	\$890.00	Each	\$8,900.00
38	Install Traffic Signal Service Pedestal Foundation (M-91.01 & 91.02)	15	\$830.00	Each	\$12,450.00
39	Install Traffic Signal UPS Pedestal Foundation (M-92.02)	5	\$830.00	Each	\$4,150.00
40	Remove "A", Pedestrian Push Button ("PPB") or bicycle push button ("BPB") Pole Foundation (M-94.01)	10	\$350.00	Each	\$3,500.00
41	Remove "E" or "F" Pole Foundation	10	\$965.00	Each	\$9,650.00
42	Remove "J", "K", "Q" or "R" Pole Foundation (M-94.05, 94.06)	10	\$2,550.00	Each	\$25,500.00

43	Remove "L", "S" Pole Foundation (M-94.05, 94.06)	1	\$2,550.00	Each	\$2,550.00
44	Remove 2' x 5' Streetlight Foundation (F-106, includes foundation cap, (M-76.01)	1	\$865.00	Each	\$865.00
45	Remove 2' x 6' Streetlight Foundation (F-104, includes foundation cap, (M-76.01)	1	\$865.00	Each	\$865.00
46	Remove 3' x 6' Streetlight Foundation (F-103, includes foundation cap, (M-76.01)	1	\$865.00	Each	\$865.00
47	Remove 3' x 8' Streetlight Foundation (F-101, includes foundation cap, (M-76.01)	1	\$1,105.00	Each	\$1,105.00
48	Remove Traffic Signal Cabinet Type V or ATCC Foundation (M-92.01) and porch slab	5	\$795.00	Each	\$3,975.00
49	Remove Traffic Signal Service Pedestal Foundation (M-91.02)	1	\$445.00	Each	\$445.00
50	Remove Traffic Signal UPS Pedestal Foundation (M-92.02)	1	\$430.00	Each	\$430.00
51	Remove Trim concrete pole foundation, anchor bolts and conduit 24" below grade, backfill and machine tamp	5	\$750.00	Each	\$3,750.00
Section 3 Subtotal Items 28-51					\$152,400.00

SECTION 4: MISCELLANEOUS CONCRETE AND ASPHALT					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
52	Saw cut concrete 4" - 6" Deep	250	\$1.25	LF	\$312.50
53	Saw cut asphalt 4" - 6" Deep	200	\$1.00	LF	\$200.00
54	Asphalt temporary patch	100	\$11.00	SF	\$1,100.00
55	Install Sidewalk concrete	100	\$13.00	SF	\$1,300.00
56	Remove Asphalt	100	\$4.95	SF	\$495.00
57	Remove Sidewalk concrete	175	\$5.50	SF	\$962.50
Section 4 Subtotal Items 52-57					\$4,370.00

SECTION 5: POLES, ARMS AND CABINETS					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
58	Install Type V or ATC Signal Cabinet	5	\$525.00	EA	\$2,625.00
59	Install UPS Cabinet (Pad Mount or Piggy Back)	5	\$525.00	EA	\$2,625.00
60	Install Service Pedestal	5	\$525.00	EA	\$2,625.00
61	Install "PPB" or "BPB" pole	40	\$255.00	EA	\$10,200.00

62	Install "A" pole 8' to 18'	25	\$355.00	EA	\$8,875.00
63	Install "E" pole	1	\$385.00	EA	\$385.00
64	Install "F" pole	1	\$385.00	EA	\$385.00
65	Install "J", "K", or "L" pole	10	\$385.00	EA	\$3,850.00
66	Install "Q", "R" or "S" pole	20	\$385.00	EA	\$7,700.00
67	Install "ITS" Pole (M-94.07 & M-94.08)	1	\$600.00	EA	\$600.00
68	Install Antenna Clamp Assembly (M-94.09)	2	\$285.00	EA	\$570.00
69	Install 18' to 20' Signal Mast Arm (SMA)	2	\$450.00	EA	\$900.00
70	Install 18' to 20' Luminaire Mast Arm (LMA)	25	\$450.00	EA	\$11,250.00
71	Install 25' to 30' Signal Mast Arm (SMA)	15	\$465.00	EA	\$6,975.00
72	Install 35' to 40' Signal Mast Arm (SMA)	15	\$465.00	EA	\$6,975.00
73	Install 45' to 55' Signal Mast Arm (SMA)	5	\$465.00	EA	\$2,325.00
74	Install 60' to 65' Signal Mast Arm (SMA)	1	\$465.00	EA	\$465.00
75	Install Streetlight; all single mast arm stepped poles	1	\$420.00	EA	\$420.00
76	Install Streetlight; all double mast arm stepped poles	1	\$465.00	EA	\$465.00

77	Install Streetlight, all Davit type poles	1	\$455.00	EA	\$455.00
78	Install Streetlight, all Tapered type poles	1	\$420.00	EA	\$420.00
79	Remove Type V or ATC Signal Cabinet	5	\$385.00	EA	\$1,925.00
80	Remove UPS Cabinet (Pad Mount or Piggy Back)	5	\$385.00	EA	\$1,925.00
81	Remove Service Pedestal	5	\$385.00	EA	\$1,925.00
82	Remove "PPB" or "BPB" Pole	1	\$255.00	EA	\$255.00
83	Remove "A" Pole	2	\$355.00	EA	\$710.00
84	Remove "E" Pole	3	\$355.00	EA	\$1,065.00
85	Remove "F" Pole	3	\$355.00	EA	\$1,065.00
86	Remove "J", "K", or "L" Pole	10	\$380.00	EA	\$3,800.00
87	Remove "Q", "R", or "S" Pole	10	\$380.00	EA	\$3,800.00
88	Remove "ITS" Pole (M-94.07 & M-94.08)	1	\$380.00	EA	\$380.00
89	Remove Antenna Clamp Assembly (M-94.09)	2	\$100.00	EA	\$200.00
90	Remove 18' to 20' Signal Mast Arm (SMA)	10	\$415.00	EA	\$4,150.00
91	Remove 18' to 20' Luminaire Mast Arm (LMA)	10	\$415.00	EA	\$4,150.00
92	Remove 25' to 30' Signal Mast Arm (SMA)	10	\$415.00	EA	\$4,150.00

93	Remove 35' to 40' Signal Mast Arm (SMA)	5	\$445.00	EA	\$2,225.00
94	Remove 45' to 55' Signal Mast Arm (SMA)	5	\$445.00	EA	\$2,225.00
95	Remove 60' to 65' Signal Mast Arm (SMA)	2	\$450.00	EA	\$900.00
96	Remove Streetlight, all single mast arm stepped poles	2	\$420.00	EA	\$840.00
97	Remove Streetlight, all double mast arm stepped poles	1	\$465.00	EA	\$465.00
98	Remove Streetlight, all Davit type poles	3	\$420.00	EA	\$1,260.00
99	Remove Streetlight, all Tapered type poles	1	\$420.00	EA	\$420.00
Section 5 Subtotal Items 58-99					\$108,925.00

SECTION 6: HEADS, MOUNTS AND ACCESSORIES					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
100	Install Pedestrian push button station on pole	75	\$175.00	EA	\$13,125.00
101	Install Pedestrian or vehicle mount on pole	100	\$320.00	EA	\$32,000.00
102	Install Pedestrian or vehicle indication on pole mount	100	\$320.00	EA	\$32,000.00
103	Install Traffic Signal Mast Arm Pelco Mount (M-94.10)	50	\$265.00	EA	\$13,250.00

104	Install Vehicle indication on Signal Mast Arm (SMA)	50	\$320.00	EA	\$16,000.00
105	Install Internally Illuminated Street Name Sign (M-95.07, 95.08, 95.09)	2	\$940.00	EA	\$1,880.00
106	Install Streetlight Luminaire on Luminaire Mast Arm (LMA)	25	\$270.00	EA	\$6,750.00
107	Install Video Detection Camera on pole or mast arm (includes mounting bracket, M-96.05)	20	\$475.00	EA	\$9,500.00
108	Install Preemption Sensor on pole or traffic signal head	20	\$465.00	EA	\$9,300.00
109	Install CAT5 shielded cable or replace existing composite cable or coax with CAT5 shielded cable (e.g. example for CCTV or radio) and terminate	7,500	\$1.95	LF	\$14,625.00
110	Install Camera (CCTV-PTZ dome or 360 Degree) on pole (includes mounting bracket (M-95.10)	5	\$675.00	EA	\$3,375.00
111	Replace Camera - remove existing camera, RDPE, and mounts and install new camera on pole (includes mounting bracket (M-95.10)	10	\$685.00	EA	\$6,850.00
112	Install radio (e.g. wireless access point) on pole or mast arm (M-95.11)	50	\$725.00	EA	\$36,250.00
113	Install Metro Sign on Signal Pole/SMA	20	\$475.00	EA	\$9,500.00
114	Remove Pedestrian push button station on pole	35	\$285.00	EA	\$9,975.00
115	Remove Pedestrian or vehicle mount on pole	30	\$320.00	EA	\$9,600.00

116	Remove Pedestrian or vehicle indication on pole mount	50	\$205.00	EA	\$10,250.00
117	Remove Traffic Signal Mast Arm Pelco Mount (M-94.10)	5	\$265.00	EA	\$1,325.00
118	Remove Vehicle indication on Signal mast Arm (SMA)	25	\$320.00	EA	\$8,000.00
119	Remove Internally Illuminated Street Name Sign and plug conduit hole with 1/2" pipe plug	5	\$965.00	EA	\$4,825.00
120	Remove Streetlight Luminaire on Luminaire Mast Arm (LMA)	15	\$270.00	EA	\$4,050.00
121	Remove Video Detection Camera on pole or mast arm (includes mounting bracket) and plug conduit hold with pipe plug	15	\$255.00	EA	\$3,825.00
122	Remove Preemption Sensor	5	\$255.00	EA	\$1,275.00
123	Remove Radio Antenna (e.G. Yagi) and mount (e.g. Pelco mount) from pole or mast arm (M-95.11)	10	\$255.00	EA	\$2,550.00
124	Remove Metro Sign on signal Pole/SMA	20	\$425.00	EA	\$8,500.00
	Section 6 Subtotal Items 100-124				\$268,580.00

SECTION 7: TRAFFIC LOOPS (BARRICADING & SEALANT PROVIDE BY THE CONTRACTOR)					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
125	6' x 6' Square Loop in Asphalt per M-96.01 through M-96.04	2	\$625.00	EA	\$1,250.00
126	6' x 15' Quadrapole Loop in Asphalt per M-96.01 through M-96.04	2	\$725.00	EA	\$1,450.00
127	6' x 20' Quadrapole Loop in Asphalt per M-96.01 through M-96.04	5	\$895.00	EA	\$4,475.00
128	6' x 40' Quadrapole Loop in Asphalt per M-96.01 through M-96.04	5	\$1,100.00	EA	\$5,500.00
129	6' x 60' Quadrapole Loop in Asphalt per M-96.01 through M-96.04	10	\$1,150.00	EA	\$11,500.00
130	Loop lead in from loop to stub out	500	\$4.25	FT	\$2,125.00
131	Install Loop stub out per Detail M-96.04	5	\$295.00	EA	\$1,475.00
Section 7 Subtotal Items 125-131					\$27,775.00

SECTION 8: MISCELLANEOUS WORK (HOURLY RATE)					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
132	Unskilled Labor	500	\$35.00	HR	\$17,500.00
133	Skilled Electrical	100	\$52.00	HR	\$5,200.00

134	Bucket Truck and operator to 45'	2	\$115.00	HR	\$230.00
135	Bucket Truck and operator to 75'	2	\$120.00	HR	\$240.00
136	Boom auger truck and operator	5	\$155.00	HR	\$775.00
137	Pickup truck and operator	20	\$67.00	HR	\$1,340.00
138	Pickup truck with arrow board and operator	5	\$87.00	HR	\$435.00
139	Platform truck and operator	1	\$110.00	HR	\$110.00
140	Backhoe and Operator	1	\$97.00	HR	\$97.00
141	Emergency mobilization fee	5	\$1,975.00	EA	\$9,875.00
	Section 8 Subtotal Items 132-141				\$35,802.00

SECTION 9: TRAFFIC CONTROL					
Item	Description	Estimated Annual Quantity	Unit Price	Unit of Measure	Total Price
142	Single Lane Closure (with pedestrian pathway) 1000 FT Work Area: Restricting the right lane in one direction with pedestrian pathway per City of Mesa Traffic Control and Barricade Specifications. Daytime set-up only, shall include delivery, set-up, pick-up and service of all devices. Per day	10	\$980.00	EA	\$9,800.00
143	Single Lane Closure - 1000 FT Work Area: Restricting the left or right lane in one direction per City of Mesa Traffic Control and Barricade Specifications. Daytime set-up only, shall include delivery, set-up, pick-up and service of all devices. Per day	10	\$465.00	EA	\$4,650.00
144	Off-Duty Uniformed Police Officer - per hour	100	\$75.00	Each	\$7,500.00
Section 9 Subtotal Items 142-144					\$21,950.00

Total Bid: \$934,382.00

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

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

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

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

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

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

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
- 12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
- 12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
16. **DEFAULT.**
- a. A party will be in default if that party:
- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
- ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;

- iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, 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; the thirty (30) day 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.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services 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, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate

the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services 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 to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose

performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

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

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

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

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

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

43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
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 Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the 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 as applicable.