

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
PIPELINE VIDEO INSPECTION, LLC  
D/B/A AIMS COMPANIES**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of January 15, 2019, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Pipeline Video Inspection, LLC, an Arizona limited liability company, d/b/a AIMS Companies (the "Contractor").

RECITALS

- A. After a competitive procurement process, the City of Mesa, Arizona ("Mesa") entered into Contract No. 2018228, dated August 20, 2018 (the "Mesa Contract"), for the performance of vactor and related services. A copy of the Mesa Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.
- B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to make purchases under the Mesa Contract, at its discretion and with the agreement of the awarded Contractor, and the Mesa Contract permits its cooperative use by other public entities, including the Town.
- C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Mesa Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with vactor and related services, including but not limited to storm sewer pipe cleaning, television services, minor repairs, and lining/coating work as necessary (the "Materials and Services"), and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials and Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until August 31, 2021 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Mesa Contract. After the expiration of the Initial Term, 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 Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Mesa Contract has

not expired or has been extended, (iii) at least 30 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 Town approves the additional one-year term in writing (including any price adjustments approved as part of the Mesa Contract), as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial 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.

2. 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 Town does not guarantee that any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the Town identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the Town to be appropriate for this Agreement, the Contractor shall provide the Materials and Services to the Town 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 approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Mesa Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. Work Orders submitted without referencing this Agreement and the Mesa Contract will be subject to rejection.

2.1 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the Town. Materials failing to conform to the requirements of this Agreement and/or the Mesa Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of non-conforming Materials or Services, the Town may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Materials or Services into compliance and withhold the cost of same from any payments due to the Contractor.

2.2 Cancellation. The Town reserves the right to cancel Work Orders within a reasonable period of time after issuance. Should a Work Order be canceled, the Town 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 Town will not reimburse the Contractor for any costs incurred after receipt of Town 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. Compensation. The Town shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$50,000.00 for the Materials and Services at the rates set forth in the Mesa Contract and as more particularly set forth in the Contractor Proposal. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed \$150,000.00.

4. Payments. The Town shall pay the Contractor monthly, based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Mesa Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of materials delivered, time expended, and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Mesa Contract will be subject to rejection and may be returned.
5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.
6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.
7. Israel. Contractor certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.
8. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.
9. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.
10. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and

budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any Town-approved work orders, the Mesa Contract, and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Mesa Contract (collectively, the "Unauthorized Conditions"), other than the Town's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the Town 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 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.

12. Rights and Privileges. To the extent provided under the Mesa Contract, the Town shall be afforded all of the rights and privileges afforded to Mesa and shall be the "City" (as defined in the Mesa Contract) for the purposes of the portions of the Mesa Contract that are incorporated herein by reference.

13. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 12 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Mesa to the extent provided under the Mesa Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town:           Town of Fountain Hills  
                                  16705 East Avenue of the Fountains  
                                  Fountain Hills, Arizona 85268  
                                  Attn: Grady E. Miller, Town Manager

With copy to:           Pierce Coleman PLLC  
                                  4711 E. Falcon Drive, Suite 111  
                                  Mesa, Arizona 85215  
                                  Attn: Aaron D. Arnson, Town Attorney

If to Contractor:       Pipeline Video Inspection, LLC  
                                  d/b/a AIMS Companies  
                                  1616 S. 31<sup>st</sup> Avenue  
                                  Phoenix, Arizona 85009  
                                  Attn: Todd Smith

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received: (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

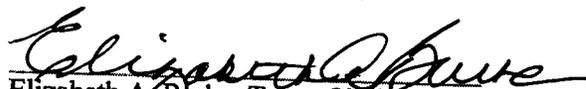
"Town"

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

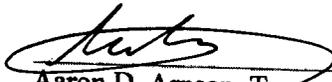
1/17/19

  
Grady E. Miller, Town Manager

ATTEST:

  
Elizabeth A. Burke, Town Clerk

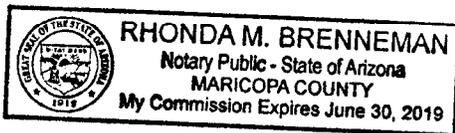
APPROVED AS TO FORM:

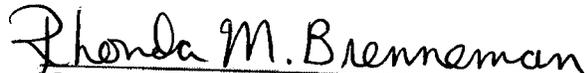
  
Aaron D. Arnson, Town Attorney

(ACKNOWLEDGEMENT)

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA    )

On January 15, 2019, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



  
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



EXHIBIT A  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
PIPELINE VIDEO INSPECTION, LLC  
DBA AIMS COMPANIES

[Mesa Contract]

See following pages.



**AGREEMENT PURSUANT TO SOLICITATION**

**CITY OF MESA AGREEMENT 2018228  
VACTOR 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, CPPB, MPA Procurement Officer
E-Mail	<a href="mailto:brandy.andersen@mesaaz.gov">brandy.andersen@mesaaz.gov</a>
Telephone	(480) 644-6426
Facsimile	(480) 644-2655

**AND**

**PIPELINE VIDEO INSPECTION, LLC dba AIMS COMPANIES ("Contractor")**

Mailing Address	1616 S. 31 <sup>st</sup> Ave. Phoenix, AZ 85009
Delivery Address	1616 S. 31 <sup>st</sup> Ave. Phoenix, AZ 85009
Attention	Todd Smith, Project Manager
E-Mail	<a href="mailto:TSmith@AIMSCompanies.com">TSmith@AIMSCompanies.com</a>
Telephone	602-237-0292, ext. 106
Facsimile	602-237-0294

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 20<sup>th</sup> day of August 2018, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and AIMS Companies, 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 **2018228** ("Solicitation") for **VACTOR SERVICES**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

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

### TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **September 1, 2018** and ending on **August 31, 2021**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
  - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) years. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
  - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

Contract where multiple as-needed orders will be placed with the Contractor. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement

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

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

5. **Payment.**

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

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

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

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

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

During the sixty (60) day period prior to Contract expiration or annual anniversary or bi-annual 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 and pricing of each unit;
- i. Applicable Taxes; and
- j. Total amount due.

5.6 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a 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 \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, 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 / Technical Specifications
  - o (B) Pricing
  - o (C) Mesa Standard Terms and Conditions
13. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
14. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
15. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

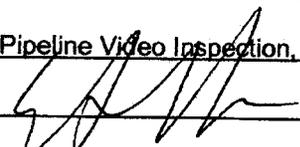
**RESPONDENT CERTIFICATION**

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

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

**ACCEPTED AND AGREED TO BY RESPONDENT:**

Company Name: Pipeline Video Inspection, LLC dba AIMS Companies

Signature: 

Printed Name: Steven J. Hudson

Title: Vice President

Date: July 6, 2018

**City Acceptance of Offer**

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

**ACCEPTANCE OF OFFER:**

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number **2018228**.

Awarded this



Digitally signed by Edward Quedens  
DN: cn=Edward Quedens, o=City of Mesa,  
~~ou=Business Services Department,~~  
email=ed.quedens@mesaaz.gov, c=US  
Location: City of Mesa  
Date: 2018.08.22 16:40:01 -07'00'  
Adobe Acrobat version: 2018.009.20050

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

REVIEWED BY:



8/21/18

By:

Brandy Andersen, CPPB, MPA

**EXHIBIT A  
SCOPE OF WORK**

1. **SCOPE OF WORK:** Contractor will provide storm drain cleaning, storm drain pipe cleaning, culvert cleaning, box culvert cleaning, pressure washer separators/vaults, sumps, wet well, and drywell cleaning and inspections for the City of Mesa (City) Transportation Department and Fleet Services. Services will be on an as needed basis.

Work will be performed at a variety of locations within City limits. Locations will also include but are not limited to: privately owned property, commercial property and property owned by other government agencies, all for which permission to enter has been obtained.

Quantities represent the City's best estimate of current requirements. There are no guarantees implied or warranted. Quantities will not bind the City to accept nor require the City to pay for services exceeding actual needs nor for any items for which funds are not available.

The City intends to award by Group; however, the City reserves the right to change this award method based on the bids received if deemed to be in the best interest of the City.

2. **VECTOR SERVICES REQUIREMENTS PER GROUP:**

**Group I – Work Requirements**

A City Representative will contact the Contractor when vector services are required. Services include but are not limited to: vector truck/high velocity jet rodding services or suction/pumping truck for storm drain cleaning, storm drain pipe cleaning, culvert cleaning, box culvert cleaning, wet well, drywell cleaning and inspection. Contractor will be able to provide services on an as needed, on call basis. The City will notify Contractor when such services are needed. Contractor will respond back to City Representative within twenty-four (24) hours of notification. City Representative will provide a map, detailed outline of work to be performed, and a notice to proceed.

Contractor will begin requested services no later than two (2) business days after receiving the notice to proceed, unless otherwise mutually agreed upon by both parties. Work will be completed within seven (7) days of the project start date.

Contractor will replace felt and rock when cleaning dry wells, no extra compensation will be paid for this service and will be included in the unit bid price.

The City will provide dump site locations for the Contractor to deposit silt and debris collected from the job sites. Contractor will decant all excess fluid into the closest sanitary manhole prior to dumping solids into the City's assigned dump location. In the event the Contractor's Operator creates a mess while dumping solids, Contractor is responsible for cleaning their mess within twenty-four (24) hours. Cleaning requirements will be determined by the City Representative.

The City will not pay for downtime if Contractor's vehicle and/or equipment is disabled or broken down while performing work for the City.

The City will not pay for travel time from Contractor's shop to the first jobsite. Upon arrival to the first jobsite, the City will begin paying the Contractor for services as defined in the agreement. Once Contractor has cleaned and emptied truck after last job is completed, payment for services will cease. The City will not pay for travel time from truck clean-out location to Contractor's yard.

**Group II – Work Requirements**

Contractor is required to provide suction/pumping services on a variety of pressure washer sumps, sumps, separators, and vaults in multiple locations. The City Representative will provide the Contractor with a map and required frequency for cleaning services. The Contractor will remove non-hazardous liquid, high solids, oily water or sludge from oil/water separators, floor drains, sand traps, pits, sumps, trenches, clarifiers, closed drums and underground waste tanks and haul to

disposal site. Contractor will be responsible for disposing waste at a legal disposal site that meets all federal, state, and local laws.

3. **EQUIPMENT:** Contractor's vehicles and equipment will be neat in appearance and easily identified with Contractor's name on side of vehicle. Contractor's vehicles and equipment will be maintained in a safe and mechanically sound working condition.

All vehicles and equipment will display the company's name and phone number. All vehicles must have lighting in accordance with the City of Mesa Temporary Traffic Control Manual <http://www.mesaaz.gov/home/showdocument?id=8062>.

All trucks and other equipment must be in compliance with all applicable federal, state and local rules and regulations.

Trucks or equipment designated for use under this contract shall not be used for any other work while conducting services for the City. Contractor will not solicit work from private citizens while performing work for the City.

Contractor will not permit placing and/or use of equipment in such a manner as to block vehicular traffic lanes or create safety hazards. Contractor will be responsible for all appropriate warning devices.

The City will not provide storage space for Contractor's vehicles, materials, supplies or equipment. Vehicles and equipment will have all necessary tools needed to perform the assigned work.

#### **Group I – Equipment Requirements**

All trucks and other equipment will be equipped with a back-up alarm and rotating flashers, strobe lights or light bar and arrow board.

Contractor's equipment will comply with the following minimum capabilities:

- Minimum 10 cu. Yard box capacity
- Minimum 1500 gal. on board tank capacity
- Minimum 80 GPM at 2000 psi jet rodder water pump capacity

Vactor truck will be equipped with an Automatic Vehicle Location (AVL) System capable of identifying the routes completed by the truck as well as identifying when a Power Take-Off (PTO) is being operated during the process. Contractor will provide a City Representative with the method and ability to access the real time data of the AVL system.

Contractor will have all hand tools and pipe plugs needed to perform assigned work. Contractor must have the capability of providing two (2) trucks simultaneously, with adequate crew, in the event the City requires such services.

#### **Group II – Equipment Requirements**

- Contractor's truck must be high capacity vacuum trucks
- Contractor's trucks must have 3000+ gallon tanks
- Contractor will have the capability to remove and transport hazardous material
- Contractor's truck must be capable of removing non-hazardous liquid, high solids, oily water or sludge from oil/water separators, floor drains, sand traps, pits, sumps, trenches, clarifiers, closed drums and underground waste tanks

4. **CONTRACTOR RESPONSIBILITIES.** Contractor will provide all equipment, materials, supplies and personnel necessary to provide storm drain cleaning, storm drain pipe cleaning, culvert cleaning, box culvert cleaning, pressure washer separators/vaults, sumps, wet well, drywell cleaning and inspection.

Contractor will be responsible for the following:

- Vactor Services to be in compliance with all federal, state and local laws, regulations, statutes, codes, etc.
- Compliance with all City, state, and Maricopa County dust control requirements, including obtaining permits if required.
- Contractor will obtain water (daily) from a designated City owned and metered hydrant while performing services under this contract. Obtaining City of Mesa water for use other than for performing work under the City of Mesa Vactor Services agreement #2018228, could result in termination of the contract.

The Contract Administrator will designate the hydrant(s) to be used. Contractor will read water meter daily at the beginning and end of shift to determine water usage. The amount of water used will be added to the daily log sheet and provided to the City of Mesa prior to invoicing. The Contractor will not be responsible for obtaining a meter or paying for water usage.

Contractor will follow all City, County, State, Federal, and Occupational Safety and Health Administration (OSHA) rules and regulations pertaining to work being performed.

Contractor will notify City Representative daily, prior to 7:00 a.m. of Vactor crew status and daily schedule.

5. **PERSONNEL:** Contractor will provide all management, supervision and labor necessary for efficient and effective management of this contract. Contractor will designate a supervisor to monitor this contract who is able to communicate with the City's Representative in English to oversee and inspect work performed by Contractor's personnel assigned to this contract. Contractor will act and work in a professional manner as to not bring undue criticism or embarrassment to the City.

The designated supervisor will be immediately available during work activities to receive communications from the City of Mesa staff by cellular phone.

Contractor will utilize only trained, competent employees in the performance of this contract. At the request of the City, Contractor will remove any incompetent, abusive or disorderly employees, whether supervisory or non-supervisory, from work under this contract.

Safety vests or high visibility clothing that meets ANSI Class II or better must be worn by Contractor employees at all times while working on site.

6. **DELIVERY REQUIREMENTS:** Contractor will be able to provide services on an as needed, on call basis, as well as pre-scheduled cleanings. Contractor must be able to respond verbally within twenty-four (24) hours of notification from City Representative. City Representative will notify Contractor when the City is in need of storm drain cleaning, storm drain pipe cleaning, culvert cleaning, box culvert cleaning, pressure washer separators/vaults, sumps, wet well, drywell cleaning and inspection. Contractor will begin services no later than two (2) business days after receiving the Notice to Proceed, unless the start date is mutually agreed upon by the City Representative and Contractor. Work schedule will be Monday through Thursday 6:00 a.m. to 5:00

pm., excluding City of Mesa holidays. The City reserves the right to make and/or approve schedule changes to allow Contractor to compete work that was missed as a result of, including but not limited to: inclement weather and holidays, etc. Any and all rescheduled work will be billed and paid at the normal rates. Contractor will not charge, and the City will not pay overtime for rescheduled work.

Holiday Schedule. The following is a list of holidays on which contract service will not be performed unless previously approved by the City (except emergency service):

- a. New Year's Day - January 1<sup>st</sup>
- b. Martin Luther King Day – Third Monday in January
- c. President's Day – Third Monday in February
- d. Memorial Day – Last Monday in May
- e. Independence Day – July 4<sup>th</sup>
- e. Labor Day – First Monday in September
- f. Veteran's Day – November 11<sup>th</sup>
- g. Thanksgiving Holiday – Fourth Thursday and following Friday in November
- h. Christmas Day – December 25<sup>th</sup>

7. **WORK AREA:** Contractor will keep the assigned work area safe for all residents, motorists, and pedestrians during the project. Contractor will, upon completion of work, leave the public right of way/worksite in a neat and clean condition. No special payment will be made for this item and price shall be included in the unit bid price(s). Contractor will restore any damaged City property or private property to its original condition as determined by the City.
8. **TRAFFIC CONTROL:** Contractor will:
  - a. Be responsible for all traffic control, including barricades, if necessary. Traffic control will be included in the bid price(s).
  - b. Ensure protection of work area at all times, unless a City Representative authorizes a waiver.
  - c. Remove all equipment and materials from each site and leave the site clean at the end of each workday and upon completion of each assigned task.

Barricading area for work performed within the public right-of-way shall comply with the City of Mesa Temporary Traffic Control Manual.

<http://mesaaz.gov/business/barricading-temporary-traffic-control-permits>

Contractor will be responsible for obtaining a City Temporary Traffic Control (TTC) permit prior to commencing any work if they are to restrict access (partial or complete closures) on public streets, sidewalks, bike lanes, alleys or other public facilities except as noted in the City TTC Rules and Procedures. The permit authorizes restrictions to be in place as specified on the permit but does not guarantee the requestor exclusive rights to occupy a particular portion of the public right-of-way. Weather, emergencies, incidents, or other projects and special events might require rescheduling of activities. The City will attempt to identify all known potential conflicts, so they can be resolved cooperatively among those involved.

Contractor may call 480-644-4TTC (4882) or e-mail [barricade@mesaaz.gov](mailto:barricade@mesaaz.gov) with any questions.

9. **PROTECTION OF THE PUBLIC DAMAGES TO EXISTING STRUCTURES:** Contractor will note a significant portion of the projects will occur in residential areas. Contractor will exercise due care to minimize any damages to fences, trees, shrubs, landscaping and general property. Contractor will exercise caution at all times for the protection of person and property. All fines, penalties and/or repair charges resulting from the Contractor's actions will be the sole responsibility of Contractor at no additional cost to the City. Contractor will immediately notify the City Representative of damages.

Contractor will not permit placing or use of equipment in such a manner as to block vehicle traffic lanes or create safety hazards. Contractor will be responsible for all appropriate warning devices.

10. **INVOICE AND PAYMENT (INVOICE AUTHORIZATION):**

- a. City Representative and Contractor will agree upon work requested and clarify any questions and concerns prior to starting work.
- b. Contractor will fax, scan, or hand deliver a list of completed work, including quantities at the end of each work day. City Representative and Contractor will agree on method of notification.
- c. A City Representative will inspect the work once completed.
- d. The City will provide the Contractor an invoice authorization every two (2) weeks for satisfactorily work completed.
- e. After invoice authorization is received from the City, Contractor will submit an invoice to the City Representative for completed work. Contractor's invoice will reflect the quantities and dollar amount stated on the invoice authorization.
- f. The City Representative will compare the invoice authorization to Contractor invoice and approve payment for authorized work.
- g. Contractor will provide City Representative with completed route map and task list prior to invoicing.

11. **METHOD OF INVOICING (CONTRACTOR'S INVOICE):** Contractor will submit invoices on a regular, consistent basis of not less than fifteen (15) days and no more than thirty (30) days unless otherwise directed by a City Representative.

Contractor's invoice will include the following information:

- a. City of Mesa Contract and Master Agreement numbers (to be provided by City upon contract award)
- b. Line items listed individually by the written description in the contract
- c. Period invoice covers, i.e. "June 1, 2018 through June 15, 2018"
- d. Contract price extended and totaled
- e. Work area with quantity completed and accepted during this time period
- f. Items grouped by Work Order and subtotaled
- g. Invoice number and date

Mail invoices to: City of Mesa Transportation Department  
PO Box 1466  
Mesa, AZ 85211-1466

**EXHIBIT B  
PRICING**

**Group I**

<b>Item No.</b>	<b>Description</b>	<b>Unit of Measure</b>	<b>Unit Price</b>	<b>Estimated Annual Quantity</b>	<b>Total Price</b>
1	Fleet - Perform cleaning services through the use of high pressure hydro jetting, vacuuming (Vactor) and pumping to include but not be limited to: drywells, wet wells, catch basins, storm drain pipes. Equipment and personnel shall include vactor truck and two (2) man crew.	Hour	\$140.00	250	\$35,000.00
2	Transportation - Perform cleaning services through the use of high pressure hydro jetting, vacuuming (Vactor) and pumping to include but not be limited to: drywells, wet wells, catch basins, storm drain pipes. Equipment and personnel shall include vactor truck and two (2) man crew.	Hour	\$140.00	1,200	\$168,000.00
3	Extra crew member - must be approved by the City.	Hour	\$29.50	500	\$14,750.00
4	Minimum 3,000 gallon water truck with operator.	Hour	\$59.50	20	\$1,190.00
<b>Group I Total</b>					<b>\$218,940.00</b>

Group II					
Item No.	Description	Unit of Measure	Unit Price	Estimated Annual Quantity	Total Price
5	Scheduled Service for Fleet: Vacuum, remove non-hazardous liquid, high solids, oily water or sludge from oil/water separators, floor drains, sand traps, pits, sumps, clarifiers, closed drums and underground waste tanks and haul to disposal site. This includes all equipment, personnel, and any dump fees.	Gallon	\$0.55	36,000	\$19,800.00
6	Scheduled Service for Transportation: Vacuum, remove non-hazardous liquid, high solids, oily water or sludge from oil/water separators, floor drains, sand traps, pits, sumps, clarifiers, closed drums and underground waste tanks and haul to disposal site. This includes all equipment, personnel, and any dump fees.	Gallon	\$0.40	40,000	\$16,000.00
7	Special projects authorized by the City: Remove non-hazardous liquid, high solids, oily water or sludge from trenches/trench drains and haul to legal dump site. This includes all equipment, personnel, travel time and any dump fees. Hourly rate bid will be paid; no extra payment will be made for travel time.	Hour	\$215.00	50	\$10,750.00
8	Cost for disposal of materials for special projects - to be used with line #7. Number of gallons will depend upon the project.	Gallon	\$0.45	1	\$0.45
Group II Total					\$46,550.45

**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 understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. 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 of 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.