



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA CONTRACT NUMBER 2016162
ASPHALT SEALCOAT MATERIALS**

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

HOLBROOK ASPHALT CO (“Contractor”)

Mailing Address	3806 S. 16 th St Phoenix, AZ 85040
Delivery Address	3806 S. 16 th St Phoenix, AZ 85040
Attention	Mark Beatty, Vice President
E-Mail	mark@holbrookasphalt.com
Telephone	435-862-8064

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 21st day of June, 2016, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Holbrook Asphalt Co. a Utah 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 **2016162** ("Solicitation") for **ASPHALT SEALCOAT MATERIALS**, 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 **July 1, 2016** and ending on **June 30, 2019**. 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.
 - 1.3 **Delivery.** Delivery shall be made to the location(s) contained in the Scope of Work within twenty-four (24) hours of receiving an order unless otherwise stated or approved by City Representative.
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. Service Level Agreement/Business Associate Agreement (if applicable)
 - 4. 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.

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

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

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

- b. **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in 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.

Price adjustments will be considered provided said adjustment(s) are submitted with thirty (30) days advance written notice to the Purchasing Department. Prices shall be in effect for the duration of the contract at the unit prices bid, with a price adjustment as follows:

The term "bituminous material" as used herein shall include asphalt cement, liquid asphalt and emulsified asphalt.

The term "Initial cost" of bituminous materials as used herein shall mean the cost as determined by the ADOT Price Adjustment for Bituminous Material for the month bids are opened. See: <http://www.azdot.gov/highways/cns/bitmat.asp>.

The contract unit price for each item that contains bituminous material will be considered to include all costs of materials as required, including the "initial cost" of bituminous material. The initial cost of bituminous material will be based on the ADOT Monthly Index as follows:

The adjustment in compensation, either increase or decrease, for bituminous material will be based on the dollar amount change in the ADOT Monthly Index from the month in which the contract was bid compared to the month in which the material is used, on a calendar month basis. This adjustment will apply only to the amount of bituminous material used in the bid item and not to the overall unit cost. The amount of bituminous material in each bid item will be as follows:

MC's and liquid asphalt	100%
Terminal blend asphalt rubber	93%
Emulsions, Concentrate	60%
Diluted 2:1	40%
Diluted 1:1	30%

Additionally, the adjustment for compensation for bituminous materials will be based on the tons of bituminous material prior to dilution. This adjustment will apply to bituminous material only.

A sample of the formula is as follows:

$(\$ \text{ amount change in ADOT index}) \times (\% \text{ of bituminous material}) + (\text{amount bid})$

The bidder certifies in signing this bid that the price will be no higher than the lowest price the bidder charges other buyers for similar quantities under similar conditions.

No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response from the City's Purchasing division.

- c. **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 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.

- 5.4 **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; and
 - j. Total amount due.
- 5.5 **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.
- 5.6 **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/\$2 million aggregate 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.

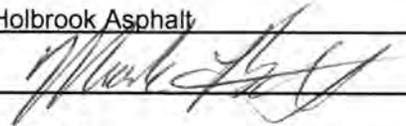
RESPONDENT CERTIFICATION

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: Holbrook Asphalt

Signature: 

Printed Name: Mark Beatty

Title: VP

Date: 3/10/2016

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 2016162.

Awarded this ____ day of _____, 2016.

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

EXHIBIT A
SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

1. **SCOPE OF WORK:** Holbrook Asphalt Co. will provide asphalt sealcoat materials and/or services as identified in the Technical Specifications of this contract.

Holbrook Co. will provide:

- o High Density Mineral Bond - material only
- o Equipment Rental for application of high density mineral bond
- o High Density Mineral Bond - material, application, traffic control and mobilization (Maricopa County)
- o Additional mobilization charge for Northern Arizona (North of Maricopa County)
- o Additional mobilization charge for Southern Arizona (South of Maricopa County)

The quantities listed herein are estimated quantities for the first twelve (12) months. This contract will be utilized by multiple agencies; however, the estimated quantities are for the City of Mesa only. The quantities presented herein are an estimate of forecasted sealcoat treatments and in no way are to be used as guaranteed amounts. It is to be understood that these amounts may change as the City determined the best means for its pavement preservation strategy.

Work will be performed throughout the fiscal year as dictated by the City or agency. Schedule will be established by the City or agency upon contract award.

This contract will be utilized by multiple agencies.

2. **MINIMUM QUALIFICATIONS:** All submitted bids for **each group** must include the following:

For Material Suppliers only – Current test results from independent laboratory. Test results must be submitted within ninety (90) days of contract award.

3. **CONTRACT AWARD:** The City will award this contract to a primary and secondary Contractor for each line item. The primary Contractor will provide asphalt sealcoat materials and services per the City's requirements until such time as an authorized employee determines that it is in the City's best interest to demand performance from the secondary Contractor. This decision will be based upon the ability of the primary Contractor to provide acceptable asphalt materials and services within the City's time requirements. The decision by the City to utilize the secondary Contractor shall be final and conclusive. The City reserves the right to change this award method based on the bids received if it is determined to be in the City's best interest to do so.

4. **DELIVERY:** Delivery will be made to various locations within the City limits. Any quantity over fifty (50) gallons may be picked up from Contractors' storage facility at the unit cost for delivered materials. Holbrook Asphalt Co. will have the ability to load materials onto City tankers. Materials will not exceed one hundred sixty (160) degrees Fahrenheit at time of delivery.

Delivery will be made to the location(s) contained herein not longer than twenty-four (24) hours of receiving an order unless otherwise stated or approved by City Representative.

5. **INVENTORY LEVELS:** Holbrook Asphalt Co.'s inventory level of the item(s) bid will be sufficient to support the City's requirements. Failure to supply item(s) within the specified time frame may result in the City ordering from an alternate supplier. However, if the City must purchase from an alternate supplier due to insufficient inventory by Holbrook Asphalt Co.'s Contractor may be

required to pay the difference in price between the contracted price and the price actually paid by the City.

6. **PLANT LOCATION:** Holbrook Asphalt Co.'s plant as indicated on the Pricing and Compensation page must be that of an active plant from which quoted material are either delivered from, or can be picked up by the City.
7. **SPILLAGE:** Holbrook Asphalt Co. will be responsible for the clean-up of any contamination or spillage resulting from the delivery and unloading of materials.
8. **ORDERING AND INVOICING INSTRUCTIONS:** Holbrook Asphalt Co. is required to issue and deliver invoices and monthly statements separately for each agency. All invoices for the City of Mesa shall include the following information to ensure prompt payment:
 - a) Department Name (Transportation)
 - b) Department Number (F350)
 - c) A valid Purchasing Authorization Number (Master Agreement – MA, Delivery Order – DO, Purchase Order – PO, Service Contract – SC or Contract – CT)

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

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

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

Holbrook Asphalt Co. will follow invoicing procedures unique to each agency that utilizes this contract.

9. **TECHINAL SPECIFICATIONS (GENERAL REQUIREMENTS):** Holbrook Asphalt Co. will abide by the following general requirements for all Groups as applicable:
 - A. Material picked up by the City or delivered by Holbrook Asphalt Co. which, after testing is found not to meet the minimum specifications will be adjusted and/or rejected in accordance with Section 105 of the current edition of the Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction.
 - B. Holbrook Asphalt Co. must have storage facilities in the Phoenix metro area where the City can use their own equipment to pick up reasonable and minimum quantities of contract materials as needed from 6:00 a.m. to 5:00 p.m. on weekdays and from 6:00 a.m. to 12:00 noon on Saturdays.
 - C. Holbrook Asphalt Co. will be required to deliver material at a temperature range of – not less than one hundred twenty (120) degrees F and not more than one hundred sixty (160) degrees F. Material will be delivered into the City of Mesa storage tanker at no added cost to the City. The minimum delivery will be one thousand (1,000) gallons and the maximum delivery will be six thousand (6,000) gallons. Delivery will be to various locations within Mesa City limits. Holbrook Asphalt Co. will supply the ordered delivery within twenty-four (24) hours upon request by phone. Any quantity over fifty (50) gallons may be picked up from Holbrook Asphalt Co. storage facility at the unit cost for delivered materials.
 - D. The City reserve the right to cancel delivery of an order at any time in the event of either inclement weather or an unforeseen emergency. Holbrook Asphalt Co. will then reschedule delivery without penalty to the City.

- E. The City will require Holbrook Asphalt Co. to have available for use/rent a storage tanker capable of holding a minimum of three thousand (3,000) gallons of material. Tanker will be used for material transfer to/from City distributor trucks as required during the course of the contract. Tanker will be kept at selected sites within the City during the contract period.
- F. Water shall be potable and free of any deleterious substance that may affect emulsion stability. Water used for dilution of product will be supplied at Holbrook Asphalt Co.'s expense and should be representative of line item pricing.
- G. The City will direct Holbrook Asphalt Co. as to the concentration of a dilution for Fog Seal at the time of ordering.
- H. The City requires the following:
 - Current test results (within the last 30 days) from independent laboratory

10. **GROUP V**

HIGH DENSITY MINERAL BOND

10.1 **Material Specifications**

A. Asphalt Binder:

Emulsified Asphalt: inorganic, non-ionic, thixotropic mineral colloid at twenty-five (25) degrees C that meet the following requirements:

Table 1 – Emulsion Properties			
Criteria	Standard	Min	Max
Brookfield Viscosity @ 77Deg F (spindle 5,20 rpm) cPs	ASTM D 2196	11,000	20,000
pH	ASTM E 70	5.0	7.5
Density, lbs/gal	AASHTO T 59	8.5	9.0
Asphalt Cement Content, % by weight	ASTM D 2172	45	50
Solids Content, % by weight	AASHTO T 59	50	54
Ash Content, % by weight	AASHTO T 111	4.0	6.0

B. Aggregate:

Clean and free from organic matter and other detrimental substances. Composed of sand, clay, slate and conundrum. Properties of slate and corundum as follows:

Table 2 – Slate			
Physical Properties			
Criteria	Standard	Min	Max
Specific Gravity	ASTM C 128	--	2.7
Compression, psi	ASTM C 170	11,000	--

Table 3 - Corundum			
Physical Properties			
Criteria	Standard	Min	Max
Specific Gravity	ASTM C 128	3.9	--

Knoop 100 Hardness	ASTM D 1326	2,000	--
Ball Mill Friability (14 grit)	ASTM B 74.8	--	50

C. Additives:

1. Water is Clean, non-detrimental, and free from salts and contaminant.
2. Polymers and other additives are necessary to achieve mix design performance.

D. Mix Design:

Completed high density mineral bond materials, prior to being loaded for install, must meet the following requirements:

Criteria	Standard	Min	Max
Asphalt Content, % by weight	D 2172	17	20
Solids Content, % by weight	D 1644	55	63
Initial Brookfield Viscosity @ 77 deg F (Spindle 4, 20 rm), cPs	D 2196	5,500	9,000
Ash Content, % by weight	T 111	38	
Ash Content of Solids, % by weight (a)	T 111	65	
Density, lbs/gal	T 59	11	
pH	E 70	6.0	8.0
Total Inorganic Aggregate Content, % by weight (b)	T 111	37	
Total Sand Content, % by weight			6.0
Maximum VOC, g/L	D 3960		5
Resistance to Re-emulsification	D 2939	No Re-emulsification	
Wear Resistance, % loss by weight (c)	D 2486		4
Notes:			
(a) Ash content as a percentage of solids content.			
(b) Ash content of completed mix minus ash content of base non-ionic emulsion. Total inorganic aggregate content is defined as slate, refined corundum, and sand.			
(c) ASTM D 2486 (Modified): Prepare sample at 48 wet mills on glass panel. Dry at 77 deg F for three (3) days. Immerse in water for 34 hours at 77 deg F. Test scrub resistance with 1,000 gram brush for 12,000 cycles. Report percent of dry film lost.			

10.2 **Construction Equipment**

A. Use a continuous flow mixing unit:

1. Capable of applying at least fifteen thousand (15,000) square yards of material per day.
2. Equipped with full sweep agitation system to assure proper suspension of fine aggregates.
3. Equipped with an operator control station that adjust material spread rate in accordance with project calibration process.
4. Equipped with a filtering system to catch particles that plug nozzles.

5. Equipped with a retractable spray bar capable of applying mixture without drilling. The bar should be positioned to meet the calibration requirements.

B. Storage Tanks

1. When delivering mix from the central mixing plant to a job site storage tank, use only storage tanks with a capacity to contain entire transport load.
2. Ensure that all site storage tanks have internal full sweep mixing mechanisms and mixing capability that can provide at any given point in the tank homogenous mix.

10.3 Preparation

A. Calibration: On a test strip at least three hundred (300) feet long, determine the correct pump settings, spray bar height, and ground speed for the application equipment. Apply material with pump settings at eighty (80) percent of maximum output (plus or minus five (5) percent) and at a ground speed of three hundred (300) to four (400) hundred feet per minute.

1. Do not begin or continue application without the City's knowledge of the calibration process and settings.
2. Do not deviate from calibration settings without the City's knowledge.

B. Surface repairs: to be determined on an as needed basis.

B. Masking: Mask-off street fixtures, end of streets and intersections.

C. Traffic Control:

1. Implement traffic control plan requirements in association with the City's traffic control protocols. Provide safe passages for pedestrians and vehicles.
2. If existing markings and stripes are to be reestablished, use reflective tabs to mark existing locations before applying surface treatment materials, cost to be included in the unit bid price(s).

D. Cleaning:

1. Remove loose material, mud spots, sand, dust, oil, vegetation, and other objectionable materials.
2. Do not flush water, or apply pressurized water over cracked pavement unless the City allows its use and there is sufficient time to allow to dry.

10.4 Protection

A. Trees, plants, and ground cover:

1. Protect trees, plants and other ground cover from damage
2. Prune trees to allow equipment passage underneath. Repair tree damage at no additional cost to the City.

- B. Protect structures, curb, gutter, sidewalks, guardrails, guide posts, etc. from physical damage.

10.5 Application

- A. Two separate application coats are required. The first application must be thoroughly set and free from damp areas before the second application begins.

- B. Spreading:

1. Keep material delivery at constant rate even if forward speed of lay-down machine varies.
2. Do not reduce application rate along edges or around manhole covers.
3. Apply both applications right to the edge of pavement. Do not leave uncovered areas near curbs, street fixtures, or edges on either application.
4. Make straight lines at all locations.
5. Place product out of right-of-way line on side streets and intersections.
6. Use hand squeegees to spread mix in areas that cannot be reached with distribution spray bar.
 - a. Provide complete and uniform coverage.
 - b. Avoid unsightly appearance from hand work.

- C. Joints:

1. Make transvers joints straight-cut butt type, not overlap type.
2. Place longitudinal joints on lane lines. Limit overlap to three (3) inches maximum.
3. Stop and correct operation of longitudinal or transvers joints that have uncovered areas or unsightly appearance.

- D. Tolerances:

1. First application: **0.20 gallons per square yard minimum.**
2. Second application: **0.16 gallons per square yard minimum.**

- E. Field Quality Control:

1. Emulsion density testing, AASHTO T 59. If testing shows material non-compliant, remove installed product and halt operations until new material is delivered and is known to be in compliance.
2. Measure the total amounts of material installed, and verify if it meets the application rate.

10.6 **After Application**

- A. Raise reflective tabs that were covered over by application
- B. Clean street fixtures
- C. Do not apply permanent pavement markings or striping until at least ten (10) days after application of material. Layout must be approved by the City.
- D. Repair
 - 1. Remove delaminated or non-compliant product found after installation and apply acceptable product.
 - 2. Remove spatter, marks and overcoat from curb, gutter, sidewalk, guardrails, guide posts, etc.
 - 3. Remove overcoat from street fixtures.
 - 4. Make edge and end lines straight.
 - 5. Leave no streaks, holes, bare spots, or cracks through which liquids or foreign matter could penetrate to the underlying pavement.
 - 6. Repair collateral damage caused by construction.
- H. Opening to Traffic
 - 1. Cure time depends on type of asphalt, mixture characteristics and weather. Keep traffic off surface until material does not track.

**EXHIBIT B
PRICING**

Group V – High Density Mineral Bond					
27	High Density Mineral Bond - material only	Gallon	\$3.39	50,000	\$169,500.00
28	Equipment Rental for application of high density mineral bond *This is the price per week. Actual quantity (weeks) may vary throughout the term of the contract. ***Primary***	Weekly	\$3,900.00	1	\$3,900.00
29	High Density Mineral Bond - material, application, traffic control and mobilization (Maricopa County) ***Primary***	Square Yards	\$1.52	250,000	\$380,000.00
30	Additional mobilization charge for Northern Arizona (North of Maricopa County) *This is the price per mobilization. Actual mobilization may vary throughout the term of the contract. ***Primary***	Per	\$1,500.00	1	\$1,500.00
31	Additional mobilization charge for Southern Arizona (South of Maricopa County) *This is the price per mobilization. Actual mobilization may vary throughout the term of the contract. ****Primary***	Per	\$1,000.00	1	\$1,000.00

Group V

Rental fee for storage tanker (if required by the City) as specified in the Technical Specifications of the general requirements: \$3,500.00 per month. Equipment rental pricing includes operator.

Holbrook Asphalt Co.'s plant is located in: Kingman, Arizona

Delivery cannot be made within twenty-four (24) hours of City's request

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 bid 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.