



# NOTICE OF SOLICITATION

Publish Date: August 1, 2022

SOLICITATION # 2022257

## **REQUEST FOR PROPOSALS FOR: GENERAL PLAN UPDATE**

### **BID DUE DATE AND TIME: AUGUST 18, 2022 – 3:00 P.M. LOCAL ARIZONA TIME**

Notice is hereby given that sealed proposals will be received by the Purchasing Division, City of Mesa until the date and time cited above. Responses received by the correct date and time will be opened publicly and read aloud by the Purchasing Division's Procurement Administrator (or designated representative).

**To join the response reading at 4:00 P.M. local Arizona time on the due date via Microsoft Teams, please visit the following website: [Microsoft Teams Meeting Invite Link](#)**

**Teleconference Number: 480-535-7460; Conference ID: 280 533 810#**

Please read the entire Solicitation package and submit the bid in accordance with the instructions. This document (less this invitation and the instructions) and any required response documents, attachments, and submissions will constitute the bid.

Responses must be in the actual possession of the Purchasing Division Office submitted electronically, on or before the exact date and time indicated above. Late submittals shall not be considered under any circumstances.

Questions concerning this Solicitation should be submitted in writing through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov/> or by email to the following Purchasing contacts or their designees:

#### **Technical Questions:**

**Nicole Nelson**

Procurement Officer I

Phone: 480-644-2653

[Nicole.Nelson@MesaAZ.gov](mailto:Nicole.Nelson@MesaAZ.gov)

#### **General or Process Questions:**

**Honey Schuchard**

Procurement Specialist

Phone: 480-644-2179

[Honey.Schuchard@MesaAZ.gov](mailto:Honey.Schuchard@MesaAZ.gov)

**NOTE:** THE CITY OF MESA PUBLISHES ITS SOLICITATIONS, ATTACHMENTS, AND ADDENDA ONLINE AND THEY ARE AVAILABLE FOR VIEWING AND/OR DOWNLOADING AT THE FOLLOWING INTERNET ADDRESS: <https://vendor.mesaaz.gov/>

Current contracts and related information are available for viewing and/or downloading at: <http://apps.mesaaz.gov/purchasingcontracts/Search>

**All vendors wishing to conduct business with the City are required to register and maintain all information used for the notification of Solicitation opportunities and issuance of payment in the Vendor Self Service (VSS) system. To register and view additional vendor information, go to <https://vendor.mesaaz.gov/>**

# TABLE OF CONTENTS

	<u>PAGE</u>
<b>NOTICE</b> .....	1
<b>TABLE OF CONTENTS</b> .....	2
<b>SECTIONS:</b>	
INSTRUCTIONS .....	3
SCOPE OF WORK .....	11
<b>ATTACHMENTS:</b>	
ATTACHMENT A – PRICING .....	16
ATTACHMENT B – REQUIRED RESPONSE FORMS.....	17
<b>EXHIBITS:</b>	
EXHIBIT 1 – DRAFT AGREEMENT .....	18

## **INSTRUCTIONS**

1. **GENERAL:** Please read the entire Solicitation package and all attachments before submitting a Response. Responses must be in accordance with the provisions, specifications, and instructions set forth herein and will be accepted until the date and time the Response is due.
2. **VENDOR QUESTIONS:** All questions regarding the contents of this Solicitation, and Solicitation process (including requests for ADA accommodations), must be directed solely to the Procurement Officer/Supervisor and/or the Purchasing Specialist. Questions should be submitted in writing through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov/> or by email. Questions received less than seven (7) calendar days before the due date and time for Responses may be answered at the discretion of the City.
3. **INSTRUCTIONS FOR PREPARING AND SUBMITTING RESPONSE:** Respondents must submit their responses electronically. Any Respondent needing assistance or guidance using the online Vendor Self Service (VSS) portal may contact the Procurement Officer/Supervisor. Do not wait for the last day to submit a response. Start early so we can fix any issues before trying to submit a response. **ALL RESPONDENTS ARE ENCOURAGED TO REVIEW INSTRUCTIONS FOR HOW TO RESPOND TO A SOLICITATION** available under Download Vendor Forms in the online VSS portal. Respondents shall provide their Responses in accordance with the following form and content requirements:
  - a. Responses shall be submitted through the City of Mesa's Purchasing Website at <https://vendor.mesaaz.gov> under the appropriate Solicitation opportunity. Submissions submitted elsewhere or under the wrong Solicitation will not be considered.
  - b. Responses must be signed by an authorized representative of Respondent with the authority to bind Respondent to make such commitments to the City set forth in the Response.
  - c. Responses should be specific to the Solicitation and present details on all requested information in a concise manner.
4. **RESPONSE FORMAT:**

**Table of Contents.** Identify contents by tab and page number.

**TAB 1 - Letter of Transmittal.** A brief letter of transmittal should be submitted that includes the following information:

1. The Respondent's understanding of the work to be performed.
2. A positive commitment to perform the service within the time period specified.
3. The names of key persons, representatives, project managers who will be the main contacts for the City regarding this Solicitation.

**TAB 2 - Qualifications. (Abilities, Experience, and Expertise)** The following information should be included:

1. A statement of Respondent's qualifications, abilities, experience, and expertise in providing the requested services.
  - a. A description of what qualifies Respondent, financial and otherwise, to provide the City with these services/materials for the required period of time, including information demonstrating Respondent, has the appropriate staffing, necessary resources, and a history of demonstrated competence.
  - b. An assessment of the Respondent's ability to meet and satisfy the needs of the City, taking into consideration the requested services, additional services, and expertise offered that exceed the requirements of the Solicitation, and the Respondent's inability to meet any of the requirements of the specifications.
  - c. References – A minimum of three (3) references, preferably from other public entities within the State of Arizona, for whom you have provided similar services. Include the

## INSTRUCTIONS

name of the entity, contact person's names, phone numbers, e-mail addresses, mailing addresses, type of service provided, and dates the services were provided.

2. Identification of senior and technical staff of Respondent to be assigned to the City. Staff named in the Response may not be substituted without permission of the City. Include in the Response resumes and relevant experience.

**TAB 3 - Program Description AND Method of Approach.** Clearly define the services/materials offered and Respondent's method of approach to including, but not limited, to the following criteria:

1. Startup of the project including the vision and gathering input
2. Development of the general plan and final plan
3. Performance Requirements
4. Ability to meet the schedule
5. Provide experience to show the minimum qualifications are met

**TAB 4 - Pricing Forms.** The cost portion of the Response should include the following criteria:

1. Completed Pricing (Attachment A).
2. A list of any and all additional charges not specifically listed on the Pricing Form.

**TAB 5 - Other Forms.** The following forms should be completed and signed:

1. Vendor Information form
2. Exceptions & Confidential Information form
3. General Questionnaire form
4. Lawful Presence Affidavit
5. Respondent Certification form (Offer and Acceptance)
6. W-9 Form. All responses should include a fully completed, current W-9 form. Failure to include the W-9 will not disqualify your response, however, the W-9 must be submitted to the City before the execution of any contract pursuant to this Solicitation. (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)

5. **RESPONSE CHECKLIST:** This checklist is provided for your convenience. It is not necessary to return a copy with your Response. Only submit the requested forms and any other requested or descriptive literature.

- Response will be sent in time to be received by City before Response due date and time.
- Pricing, math double-checked, form completed and included (Attachment A)
- Required Response Forms completed and included (Attachment B)
- Respondent Questionnaire form completed and included (Attachment C)
- W-9 Request for Taxpayer Identification Number and Certification form completed and included (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>)
- Warranty information, if applicable

6. **ADDENDA:** Any changes to the Solicitation document will be in the form of an addendum. Addenda are posted on the City website. Contractors are cautioned to check the Purchasing Website or the Self-Service portal for addenda before submitting their Response. The City will not be held responsible if a vendor fails to receive any addenda issued. *The City shall not be responsible for any oral changes to these specifications made by any employees or officer of the City and Contractors are cautioned not to rely on any such changes.* Failure to acknowledge receipt of an addendum may result in disqualification of a Response.

7. **RESPONSE OPENING:** The City will open all Responses properly and timely submitted and will record the names and other information specified by law and rule. The Response Opening will be conducted at 4:00 P.M. local Arizona time following the final **SOLICITATION DUE DATE AND TIME** via Microsoft Teams. No responsibility will attach to the City of Mesa, its employees, or agents for the premature opening of a Response. All Responses become the property of the City and will not be returned. Results, as read at the public opening, will be posted on the City website.

## INSTRUCTIONS

Responses will be available to the public in accordance with the City Procurement Rules.

8. **LATE RESPONSES:** The Respondent assumes responsibility for having the Response submitted on time. All Responses received after the Response Due date and time shall not be considered and will be unopened. **The Respondent assumes the risk of any delay caused by not being able to access the system. Respondents must allow adequate time to accommodate all registration and submission requirements.** It shall not be sufficient to show that Respondent attempted to submit a response before the due date and time as the Response must be received by the City. All times are Mesa, Arizona local times. Respondents agree to accept the time stamp in the Vendor Self Service portal as the official time. Any Respondent needing assistance or guidance using the online system may contact the Procurement Officer/Supervisor. Do not wait for the last day to submit a response. Start early so we can fix any issues before trying to submit a response. ALL RESPONDENTS ARE ENCOURAGED TO REVIEW INSTRUCTIONS FOR HOW TO RESPOND TO A SOLICITATION available under Download Vendor Forms in the online VSS portal.
9. **RESPONSE FIRM TIME:** Responses shall remain firm and unaltered after opening for **180** Days unless the time is extended or amended as agreed upon by Respondent and the City. Examples of where an extension or amendment may be necessary include but are not limited to: (i) contract negotiations with selected Respondent; (ii) submission of a Best and Final Offer by Respondent; (iii) City needing additional time to review responses. The City may accept the Response, subject to successful contract negotiations, at any time during this period.
10. **LOBBYING PROHIBITION:** Any communication regarding this Solicitation for the purpose of influencing the process or the award, between any person or affiliates seeking an award from this Solicitation and the City including, but not limited to, City Council, City employees, and consultants hired to assist the City in the Solicitation, is prohibited.

This prohibition is imposed from the time of the first public notice of the Solicitation until the City cancels the Solicitation, rejects all Responses, awards a contract, or otherwise takes action which ends the Solicitation process. This section shall not prohibit public comment at any City Council meeting, study session, or City Council committee meeting.

This prohibition shall not apply to Respondent-initiated communication with the contact(s) identified in the Solicitation or City-initiated communications for the purposes of conducting the procurement including, but not limited to, vendor conferences, clarification of Responses, presentations if provided pursuant to the Solicitation, requests for Best and Final Responses (as set forth in the City Procurement Rules), contract negotiations, protest/appeal resolution, or surveying non-responsive vendors.

Violations of this provision shall be reported to the Purchasing Administrator. Persons violating this prohibition may be subject to a warning letter or rejection of their Response depending on the nature of the violation.
11. **LAWFUL PRESENCE IN THE UNITED STATES:** Arizona Revised Statutes § 1-501 and § 1-502 require all persons who will be awarded a contract (a Public Benefit as defined in 8 USC Section 1621) must demonstrate they are lawfully present in the United States. A person under the statute is defined as a natural person and therefore excludes Limited Liability Companies, Corporations, Partnerships, or other similar types of business entities as indicated on a W-9 form.

Individuals (natural persons) or Sole Proprietorships must complete the affidavit in the “Required Response Forms” section of this Solicitation. Respondents that fail to provide a completed affidavit and fail to provide the necessary documentation may be deemed non-responsive.
12. **COMMENCEMENT OF WORK:** If a Respondent begins any billable work before the City’s final approval and execution of the contract, Respondent does so at its own risk.
13. **RESPONSIBILITY TO READ AND UNDERSTAND:** Failure to read, examine and understand the

## INSTRUCTIONS

Solicitation and any of its addenda will not excuse any failure to comply with the requirements of the Solicitation or any resulting contract, nor shall such failure be a basis for claiming additional compensation. The City is not responsible for and will not pay any costs associated with the preparation and submission of a Response. Respondents are cautioned to verify their Responses before submission, as amendments to or withdrawal of Responses submitted after the time specified for the opening of Responses may not be considered. The City will not be responsible for any Respondent errors or omissions.

14. **FORM AND CONTENT OF RESPONSES:** Responses must be submitted online through the City of Mesa's Purchasing Website Vendor Self Service portal at <https://vendor.mesaaz.gov> under the appropriate Solicitation opportunity. Physical submissions, e-mail, or fax submissions will not be accepted unless explicitly allowed by the City of Mesa Purchasing Division. Unless otherwise instructed or allowed, Responses shall be submitted on the forms provided. Responses, including modifications, must be submitted electronically, and signed by an authorized representative of the Respondent. Please line through and initial rather than erase changes. Any modifications to the Solicitation must be identified in the "Exceptions" section of the required response forms. The City does not encourage exceptions. The City is not required to grant exceptions and depending on the exception, the City may reject the Response as non-responsive. The City reserves the right at its sole discretion to negotiate exceptions with a Respondent. If the Response is not properly signed or if any changes are not initialed, it may be considered non-responsive. In the event of a disparity between the unit price and the extended price, the unit price shall prevail unless obviously in error, as determined by the City. The Response must provide all information requested and must address all points set forth in the Solicitation.
  
15. **SPECIFICATIONS:** Technical specifications define the minimum acceptable standard. When the specification calls for "Brand Name or Equal," the brand name product is acceptable. The use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition. If a Respondent wishes to provide a material or service that is not the brand name, the equivalent material or service must meet the standard of quality of the brand name product, which is determined at the City's sole discretion. Equivalent products will be considered upon showing the other product meets stated specifications and is equivalent to the brand-name product in terms of quality, performance, and desired characteristics. Products that are substantially equivalent to those brands designated will qualify for consideration.  
  
Minor differences that do not affect the suitability of the supply or service for the City's needs may be accepted. Burden of proof that the product meets the minimum standards or is equal to the brand name product is on the Respondent. The City reserves the right to reject Responses that the City deems unacceptable for any reason.
  
16. **MODIFICATION/WITHDRAWAL OF RESPONSE:** Written requests to modify or withdraw a Response received by the City before the scheduled opening time for Responses will be accepted and will be corrected after the Response due date and time. No oral requests will be allowed. Requests must be addressed and labeled in the same manner as the Response and marked as a MODIFICATION or WITHDRAWAL of the Response. Requests for withdrawal after the Response Due date and time will only be granted upon proof of undue hardship and may result in the forfeiture of any Response security. Any withdrawal after the Response due date and time shall be allowed solely at the City's discretion.
  
17. **DEBARMENT DISCLOSURE:** If the Respondent has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government or agency, or if any such preclusion from participation from any public procurement activity is currently pending, the Respondent shall include a letter with its Response identifying the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is

## INSTRUCTIONS

currently pending, a detailed description of all relevant circumstances must be provided by the Respondent, including the details enumerated above. A Response from a Respondent who is currently debarred, suspended, or otherwise lawfully prohibited from any public procurement activity may be rejected. Failure of a Respondent to disclose a debarment or suspension in accordance with this Section may result in the Response being disqualified for an award of the Solicitation.

18. **RESERVATIONS:** The City reserves the right to reject any or all Responses or any part thereof; to re-issue the Solicitation; to reject non-responsive or non-responsible Responses; to reject unbalanced Responses; to reject Responses where the terms, prices, or awards are conditioned upon another event; to reject individual Responses for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to waive minor irregularities, defects, omissions, informalities, technicalities or form errors in any Response; to conduct exclusive or concurrent negotiations of any terms, conditions, or exceptions taken by a Respondent or the terms of any agreement/document a Respondent would require the City to sign should Respondent be awarded a contract; and to reject Responses that are outside the City's budgeted amount for the materials or services that are the subject of the Solicitation. The City may seek clarification of the Response from Respondent at any time, and failure to respond is cause for rejection. Submission of a Response confers no right to an award or a subsequent contract. The City is charged by its Charter to make an award that is in the best interest of the City. All decisions on compliance, evaluation, terms, and conditions shall be made solely at the City's discretion and made to favor the City. No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.
  
19. **EXCEPTIONS TO A SOLICITATION:** Changes to the Solicitation document requested by a Respondent may not be acknowledged or accepted by the City. Award or execution of a contract does not constitute acceptance of a changed term, condition, or specification in the Solicitation unless specifically acknowledged and agreed to by the City. The copy of the Solicitation, including all addenda, maintained and published by the City shall be the official Solicitation document. Any exception to the Solicitation must be set forth in the "Exceptions" portion of the Response; any exceptions not indicated in the "Exceptions" portion of the Response will be deemed rejected by the City, void and of no contractual significance. The City reserves the right to: (i) reject any or all exceptions requested by a Respondent; (ii), determine a proposal non-responsive due to the exception(s) made by Respondent; (iii) enter into negotiations with a Respondent regarding any of the Respondent's exceptions, or (iv) accept any or all of a Respondent's exceptions outright.
  
20. **COPYING OF RESPONSES:** The Respondent hereby grants the City permission to copy all parts of its Response including, without limitation, any documents and/or materials copyrighted by the Respondent. The City's right to copy shall be for internal use in evaluating the Response.
  
21. **CONTRACTOR ETHICS:** Contractors doing business with the City shall adhere to the Procurement Ethics Standards, Article 7 of the Procurement Rules. It is the policy of the City to promote courtesy, fairness, impartiality, integrity, service, professionalism, economy, and government by law in the Procurement process. The responsibility for implementing this policy rests with each individual who participates in the Procurement process, including Respondents and Contractors. The failure of a Respondent or Contractor to meet the ethical standards may result in the disqualification of an award under the Solicitation or the termination of a contract with the City.  

To achieve the purpose of this Section, it is essential Respondents and Contractors doing business with the City observe the ethical standards prescribed herein and in the City Charter, Code Procurement Rules, and Management Policy 200. It shall be a breach of ethical standards to:

  - a. Exert any effort to influence any City official, employee, or agent to breach the standards of ethical conduct.
  - b. Intentionally invoice any amount greater than provided in a contract or to invoice for materials or services not provided.

## INSTRUCTIONS

- c. Intentionally offer or provide sub-standard materials or services or intentionally not comply with any term, condition, specification, or other requirements of a City contract.
22. **GIFTS:** The City will accept no gifts, gratuities, or advertising products from Respondents or prospective Respondents and affiliates. The City may request product samples from Respondents solely for the purpose of product evaluation.
23. **EVALUATION PROCESS:** Responses will be reviewed by an evaluation committee comprised of City employees and/or agents authorized by the City to participate in the evaluation. The evaluation committee may utilize multiple rounds of review to determine which Respondent is most advantageous for the City to award; Respondents' scores may be adjusted throughout the evaluation process/rounds. The City reserves the right to consider all information relevant to determining an award in the best interest of the City, including Respondents' performance under prior contracts. The evaluation process may include but is not limited to: a review of proposal Responses, interviews, presentations, site visits, product/service demonstrations, Best and Final Offers, requests for additional information, and requests for clarification. City staff may initiate discussions with Respondents for clarification purposes; however, a request for clarification is not an opportunity for a Respondent to change the Response. A request for clarification and/or additional information from a Respondent does not guarantee clarification and/or additional information will be requested from any other Respondents. Respondents shall not initiate discussions with any City employee, agent, or official as set forth in the Lobbying section of these instructions including, but not limited to, members of the evaluation committee.
24. **PRESENTATIONS/INTERVIEWS:** A Respondent must provide a formal presentation/interview upon request of the City.
25. **SHORT-LISTING:** The City, at its sole discretion, may create a shortlist of the highest scored Responses based on a preliminary evaluation of the Responses against the evaluation criteria. Only those short-listed Respondents will be invited to give presentations/interviews. Upon conclusion of any presentations/interviews, the City will finalize the scoring against the evaluation criteria.
26. **BEST AND FINAL OFFERS:** The City may request Best and Final Offers if the City deems necessary and the City will determine the scope and subject of any Best and Final request. Respondents should not expect the City will always ask for Best and Final Offers. Therefore, all Respondents must submit their best offer based on the specifications, terms, and conditions in the Solicitation.
27. **CRITERIA FOR EVALUATION AND AWARD:**

- a. The criteria that will be evaluated and their relative weights are:

Evaluation Criteria	Points
Firm's Qualifications & Experience	45
Firm's Proposed Solution / Method of Approach	45
Firm's Proposed Pricing	10

Pricing will be evaluated based on the below equation:

$$\frac{\text{Lowest Proposal Cost}}{\text{Proposal Cost being evaluated}} \times \text{Price Points Possible} = \text{Pricing Score}$$

- b. If less than three (3) Responses to a Solicitation are deemed responsive by the City, at the City's sole discretion, the Responses may be evaluated using simple comparative analysis



## INSTRUCTIONS

instead of any announced method of evaluation, subject to meeting administrative and responsibility requirements.

- c. Each Response will be evaluated based upon responsiveness and responsibility criteria. A failure to meet responsiveness or responsibility criteria will render a Respondent ineligible for the award of a contract under the Solicitation.
  1. **Responsiveness.** The City will determine whether the Response complies with the instructions for submitting a Response set forth in the Solicitation (i.e. the completeness of the Response which encompasses the inclusion of all required attachments and submissions). Responsiveness will also be examined as it pertains to items set forth in this Solicitation that state a Respondent may be deemed non-responsive based upon the content of their Response. The City will reject any Responses that are submitted late. Failure to meet any requirements in the Solicitation may result in rejection of a Response as non-responsive.
  2. **Responsibility.** The City will determine whether a Respondent is one with whom the City should do business. Factors the City may evaluate to determine responsibility include, but are not limited to: an excessively high or low priced Response; past performance under any agreement with the City; references from any source including, but not limited to, those found outside the references listed in the Response and City employees, agents or officials who have experience with the Respondent; compliance with applicable laws; Respondent's record of performance and integrity (e.g. has the Respondent been delinquent or unfaithful to any contract with the City, whether the Respondent is qualified legally to contract with the City, financial stability and the perceived ability to perform completely as specified). A Respondent must at all times have financial resources sufficient, in the opinion of the City, to ensure the performance of the contract and must provide proof upon request. City staff may also use Dun & Bradstreet or any generally available industry information to evaluate the Respondent. The City reserves the right to inspect and review Respondent's facilities, equipment, and personnel and those of any identified subcontractors. The City will determine whether any failure to supply information or the quality of the information, will result in Respondent being deemed non-responsible.
- d. Respondents who have a Transaction Privilege Tax license for Mesa and who, if awarded a contract, would charge the City TPT to be paid to Mesa, will have 2.00% removed from the taxable item(s) from the price set forth in the Response for the purpose of award evaluation. The awarded Respondent shall however charge the full amount of tax on their invoice(s).

This consideration does not apply to:

1. Construction procurements or any other procurement done using Arizona Revised Statutes Title 34 processes.
  2. Purchases using federal or other funds where the agreement that provided the funds precludes any local consideration or preference.
28. **COST JUSTIFICATION:** In the event, only one Response to the Solicitation is received, the City may require the Respondent to submit a cost offer in sufficient detail for the City to perform a cost/price analysis to determine if the Response price is fair and reasonable.
29. **CONTRACT NEGOTIATIONS AND ACCEPTANCE:** Respondent must be prepared for the City to accept the Response as submitted. If Respondent fails to sign all documents necessary to successfully execute the final contract within a reasonable time as specified, or negotiations do not result in an acceptable agreement, the City may reject the Response or revoke the award and may begin negotiations with another Respondent. Final contract terms must be approved or signed by the appropriately authorized City official(s). No binding contract will exist between the Respondent and the City until the City executes a written contract or purchase order.
30. **NOTICE OF INTENT TO AWARD:** Notices of the City's intent to award a contract are posted to

## INSTRUCTIONS

the Purchasing Division's website before 6:00 P.M. local Arizona time at least seven (7) calendar days before award.

**It is the Respondent's responsibility to check the City of Mesa's Vendor Self Service portal at <https://vendor.mesaaz.gov/> to view Purchasing's Intent to Award notices.** This may be the only notification you will receive regarding the City's Intent to Award a contract related to this Solicitation.

31. **PROTESTS AND APPEALS:** If a Respondent or any person believes there is a mistake, impropriety, or defect in the Solicitation, believes the City improperly rejected its Response or believes the selected Response should not receive the City contract based upon a fact supported issue with the Solicitation or selected Respondent or otherwise protests the award to the Respondent, the Respondent may submit a written protest. All protests and appeals are governed by the City Procurement Rules ("Procurement Rules"). The rules surrounding protests and appeals may be found in Section 6 of the Procurement Rules which are located on the Purchasing Division website at <http://mesaaz.gov/business/purchasing>. Please see the Procurement Rules for more information on the submission of a protest and corresponding appeal rights; if there exist any discrepancy in this Section and the Procurement Rules, the language of the Procurement Rules will control.

**ADDRESS PROTESTS TO:**

Kristy Garcia  
Procurement Administrator  
20 East Main Street, Suite 450  
PO Box 1466  
Mesa, Arizona 85211-1466  
Fax: (480) 644-2655  
Email: [Kristy.Garcia@MesaAZ.gov](mailto:Kristy.Garcia@MesaAZ.gov)

**ADDRESS APPEALS TO:**

Edward Quedens  
Chief Procurement Officer  
20 East Main Street, Suite 450  
PO Box 1466  
Mesa, Arizona 85211-1466  
Fax: (480) 644-2687  
Email: [Ed.Quedens@MesaAZ.gov](mailto:Ed.Quedens@MesaAZ.gov)

32. **POLICY DOCUMENTS:** The City of Mesa Charter, Code, Procurement Rules, and Management Policy 200 govern this procurement and are incorporated as a part of this Solicitation by this reference. A copy of these documents may be found on Mesa Purchasing Division's website at [www.mesaaz.gov/business/purchasing](http://www.mesaaz.gov/business/purchasing).

## **SCOPE OF WORK**

*This Scope of Work will be compiled into any resulting contract as Exhibit A.*

1. **INTENT:** This Request for Proposal is seeking professional planning consultation services to help prepare the required ten (10) year update to the City of Mesa's General Plan.
2. **BACKGROUND:** The City of Mesa located in Arizona has identified the need for professional planning consultation services to help prepare the required update to the City's General Plan. The update is required by state statutes to be completed every ten (10) years. Therefore, the updated plan needs to be completed by March 2024 and placed on the ballot for voter approval in November of 2024. The plan update will include a complete review of the current plan including the current state of planning in the City (i.e. where are we as a city and where are we headed), update to community goals, objectives and policies (i.e. where do we want to go as a city), and implementation strategies (i.e. how do we get there). The update will also include the drafting and creation of a Balanced Housing Master Plan as an extension to the General Plan's Housing Element. The plan update will also likely extend the planning horizon in the city to the year 2050. The result of this solicitation is to select (or "short list") up to four (4) of the most qualified proposals for interview and final selection.

The City of Mesa is located in the southeast valley of the Phoenix metropolitan area. Mesa's corporate limit encompasses approximately one-hundred and forty one (141) square miles and its planning area encompasses approximately one-hundred and seventy one (171) square miles. The City shares boundaries with other cities such as Tempe, Chandler, Gilbert, Apache Junction and Queen Creek. According to the 2020 census, Mesa's population is 504,258 and is projected to be 680,000 by 2050. The city is the third largest in the State of Arizona and the thirty seventh (37<sup>th</sup>) largest city in the United States.

3. **MINIMUM QUALIFICATIONS:** Consultants must have experience in the project management and execution of the following skills:
  - A. Leadership and successful completion of planning studies comparable in scope to a comprehensive update to a General Plan/Comprehensive Plan.
  - B. Development and implementation of public participation processes such as public meetings, key person interviews, public surveys, etc.
  - C. Development of planning documents, website, interactive and static materials.
  - D. Effective communication of recommendations and implementation strategies to elected officials, non-profit organizations and stakeholders.

#### 4. **SCOPE OF WORK:**

##### **Phase 1 - Project Start-Up**

The Consultant shall:

1. Conduct preliminary administrative tasks including, but not limited to:
  - a. Review the current General Plan and other background materials such as the City's history and demographics.
  - b. Review other appropriate local, regional, and state documents.
  - c. Review and have working knowledge of the City's plans including, but not limited to, the Transportation Master Plan, the Parks and Recreation Master Plan, the Climate Action Plan, the City's Strategic Plan, the Transit Master Plan, the Bicycle Master Plan, Capital Improvement Plan, Redevelopment Plans, and Sub-area Plans.
  - d. Meet with City staff to discuss issues such as existing conditions, goals, opportunities, roles and responsibilities, development policies, implementation strategies, and logistical issues.
  - e. Gather base GIS data, maps, and other technical information needed from staff.

## **SCOPE OF WORK**

- f. Prepare technical reports such as a housing inventory, housing needs assessment, economic profile, etc. that will help in addressing existing conditions.
  - g. Have a Work Plan that identifies the types of data to be prepared and what base maps and inventory will be analyzed.
2. Prepare a Public Participation Plan, as required by ARS 9-461.06, to be reviewed by staff and the advisory committee, and presented to City Council for adoption. The Public Participation Plan should be designed to engage all segments of the community, in all locations, and to permit individuals to enter and exit the process as their time and interests allow. The Consultant will organize and facilitate all public participation events. The Public Participation Plan should address how outreach and engagement will be coordinated with the concurrent updates to the Transportation Master Plan and Transit Master Plan. The Public Participation Plan is expected to include a variety of methods for encouraging public participation including but not limited to visioning workshops, social media strategy, interactive web-based site, stakeholder meetings, and educational presentations to inform the community and decision makers on the latest trends and topics related to land use, transportation, environment, and economic development. The consultant will attend civic organization meetings, conduct surveys, attend regular advisory committee meetings, attend public hearings with the Planning & Zoning Board, City Council, and other interested Boards, and will employ the use of a website and social media. The Public Participation Plan must include a general timeline for the implementation of the Public Participation Plan and other tasks identified in this scope of work.
3. Conduct a kick-off meeting with advisory committees that will be responsible for regularly reviewing the progress of the project and providing input to the consultant and staff in a public setting. City staff will assist in identifying public officials, staff, and stakeholders to appoint to these committees. The frequency of the advisory committee meetings will be determined during the preparation of the Public Participation Plan and may be adjusted as needed.
4. Prepare a project schedule and work plan with major work components, deliverables and milestones.

### **Phase 2 – Visioning and Gathering Input**

The Consultant shall:

1. Employ the use of electronic media to notify and engage the public of upcoming events, solicit public input and keep the public apprised of the ongoing draft document.
2. Provide, update, and manage an informative dedicated website for the General Plan update that is linked to the City's webpage.
3. Prepare an informational brochure with Frequently Asked Questions (FAQ's) about the General Plan update process to be available through social media and distributed at public meetings.
4. Conduct visioning workshops, stakeholder meetings, advisory committee meetings, and other public meetings as identified in the Public Participation Plan in such a manner that encourages meaningful input and interaction. Stakeholders to be interviewed include, but are not limited to: Mesa, Gilbert, and Queen Creek School Districts, the Mesa Chamber of Commerce, and utility agencies that serve Mesa.
5. Produce meeting minutes for all advisory committee meetings, workshops, stakeholder meetings, and other public meetings. These documents shall be available electronically.
6. Summarize comments received from all meetings and electronic communication and present to staff and advisory committees.
7. Produce large-scale exhibits or electronic media for workshops.

### **Phase 3 – Development of General Plan and Balanced Housing Master Plan**

The Consultant shall:

## **SCOPE OF WORK**

1. Prepare a draft General Plan document consisting of an introduction, a Vision Statement approved by the advisory committee, all elements as required by Arizona Revised Statutes and requested by the advisory committee, community goals, development policies, implementation strategies for addressing various challenges and opportunities and all related graphics. The draft plan shall be a web-based design with the ability to be professionally printed.
2. Prepare a draft Balanced Housing Master Plan in conjunction with the Housing Element of the draft General Plan that provides a balance of housing for all types of families and people, at all stages of life and income levels.
3. Create updateable GIS maps compatible with the City's GIS system.
4. Coordinate with all City Departments in the preparation of the elements in which the Department has an interest or responsibility. For example, Transportation, Housing, Parks and Recreation, and Arts and Culture elements.
5. Provide the services of an economic consultant, and a housing consultant to analyze Mesa's housing market and economic growth and prepare goals for the elements related to the study such as the Land Use, Housing, Growth Areas Elements, and the Economic Development Element. Specific goals may also apply to certain Character Areas.
6. Produce General Plan and Balanced Housing Plan drafts for review by staff and present to advisory committees for review and input. Elements may be drafted and reviewed individually or in groups to make the process manageable for consultants and reviewers. Drafts are to be posted on the City's webpage for the public to review and provide feedback.
7. Once draft documents have been reviewed and comments received from the the advisory committees, the consultant shall generate a final draft of the General Plan and the Balanced Housing Master Plan.
8. All documents shall be submitted in accordance with the time frames set forth in the final work plan.

### **Phase 4: Presentation of Final Draft for Adoption**

The Consultant shall:

1. Provide final documents, including maps, in an electronic, web-based format acceptable for professional printing. The final General Plan and Balanced Housing Master Plan are policy documents that must be technically accurate, user-friendly, concise and written in a manner that is easily understood. There shall be an emphasis on providing information visually through the use of diagrams, photographs, tables, and maps.
2. Prepare an executive summary of the General Plan in pamphlet form that includes typical questions and answers and that folds out to the General Plan's future land use map. The consultant will produce the prototype and a final draft in an electronic format acceptable for professional printing.
3. Present the final documents to the Planning & Zoning Board, City Council and any other Boards identified in the Public Participation Plan and Work Plan.
4. The City may request additional, closely related services as needed.

### **5. PERFORMANCE REQUIREMENTS:**

Tentative Scoring Criteria:

1. Overall understanding of project scope
2. Relevant project experience including references
3. Public Participation Approach:
  - a. Tentative schedule
  - b. Proposed activities and events
  - c. Collaboration with specific plan updates
  - d. Creativity in methods
  - e. Use of technology
4. Project Team Qualifications:
  - a. Definition and clarity of roles

## SCOPE OF WORK

- b. Project manager's qualifications
  - c. Project lead staff qualifications
  - d. Other key team members' qualifications
  - e. Sub-consultants' qualifications
  - f. Experience of key team members working together (continuity)
5. Workload Capacity:
- a. Availability and commitment of key team members and resources to perform the work in the time frame required.
  - b. Other contractual obligations and ability to meet multiple obligations
  - c. Support staff and production capabilities
6. Project Approach:
- a. Understanding of the unique elements of the project
  - b. Understanding of local issues, risks, concerns, and interests
  - c. Approach to analyzing and solving key issues
  - d. Rational approach to implementation
  - e. Innovative but feasible ideas for implementation
  - f. Cost – staff hours and rates per staff classification to be used

6. **SCHEDULE:**

Technical Advisory Board Creation: October 2022  
General Plan Kick-off: October 2022  
Citizen Participation Plan Creation: October/ November 2022  
Data Collection and Analysis: October 2022 through December 2022  
Sub-element Focus Group Creation November 2022 through December 2022  
Public Outreach: January 2023 through July 2024  
Plan Development: March 2023 through March 2024  
Final Draft Due: March 10, 2024  
Planning & Zoning Recommendation: April, 30 2024  
City Council Hearing: June 30, 2024  
Ratified by Voters: November 5, 2024

7. **TERM:** An estimated initial term of 9/30/2022 through 12/31/2024, not including any extensions. If the commencement of performance is delayed because the City does not execute the Agreement at this start date, the City may adjust the start date, end date, and any milestones to reflect the delayed execution.
8. **EXTENSIONS:** Upon the expiration of the Term of the Agreement, including any renewals permitted herein, at the City's sole discretion the Agreement may be extended for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials under this Agreement. The City intends to notify the Contractor in writing of its desire to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
9. **PRICING:**
- A. **Prices.** All pricing shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement and include all costs of the Contractor providing the materials/service including transportation, insurance, and warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

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

## SCOPE OF WORK

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

- B. **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 6, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

- a. Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
- b. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Products and Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials, or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
- c. Automobile liability, bodily injury, and property damage with a limit of \$1 million per occurrence including owned, hired, and non-owned autos.
- d. Professional Liability (Errors and Omissions Liability), the Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence Professional Liability insurance.

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

When the City requires a Certificate of Insurance to be furnished, the Contractor's insurance shall be primary of all other sources available. When the City is a certificate holder, the Contractor agrees that no policy shall expire, be canceled, or materially changed to affect the coverage available without advance written notice to the City.

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

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

## **ATTACHMENT A** **PRICING**

Respondents must respond to the pricing items below. Responses shall be submitted through the City of Mesa's Purchasing Website at <https://vendor.mesaaz.gov/> under the appropriate Solicitation opportunity. Submissions submitted elsewhere or under the wrong Solicitation will not be considered.

Consultants must submit a fee proposal for the project, which includes but is not limited to the following:

1. An estimate of time to be spent by respective positions for each phase of the work.
2. The hourly billing rate for each position.
3. A cost breakdown for each phase and for each deliverable.
4. An estimate of reimbursable expenses to be included in the project.



**ATTACHMENT B**  
**REQUIRED RESPONSE FORMS**



Solicitation Required  
Response Forms.docx

**(Double Click Icon to Open)**

**EXHIBIT 1**  
**DRAFT AGREEMENT**



**AGREEMENT PURSUANT TO SOLICITATION**

**CITY OF MESA AGREEMENT NUMBER 2022257  
GENERAL PLAN UPDATE**

**CITY OF MESA, Arizona (“City”)**

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 450 Mesa, AZ 85201
Attention	Nicole Nelson Procurement Officer I
E-Mail	<a href="mailto:Nicole.Nelson@MesaAZ.gov">Nicole.Nelson@MesaAZ.gov</a>
Phone	(480) 644-2653

With a copy to: City of Mesa – Development Services Department  
Attn: Name, Title  
P.O. Box 1466  
Mesa, AZ 85211-1466  
[EndUserEmail@MesaAZ.gov](mailto:EndUserEmail@MesaAZ.gov)

**AND**

**COMPANY NAME, (“Contractor”)**

Mailing Address	
Remit to Address	
Attention	
E-Mail	
Phone	
Fax	

**EXHIBIT 1**  
**DRAFT AGREEMENT**

**CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION**

This Agreement pursuant to Solicitation ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and CompanyName, a(n) State corporation/company/natural person ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

**RECITALS**

- A. The City issued Solicitation number **202257** ("Solicitation") for **GENERAL PLAN UPDATE**, 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 **TBD** and ending on **TBD**. 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 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days before the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately before the expiration of the then-current term.
- 2. **Scope of Work**. The Contractor will provide the necessary staff, services, and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

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

**EXHIBIT 1**  
**DRAFT 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 **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. No terms set forth in any invoice, purchase order, or similar document issued by Contractor will be deemed accepted by the City; the terms of the contractual relationship between the Parties are as set forth in this Agreement. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;

**EXHIBIT 1**  
**DRAFT AGREEMENT**

- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes;
- j. If applicable, mileage or travel costs; and
- k. Total amount due.

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

5.6 **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 before the execution of the Agreement and remain in effect for the term of the Agreement.

6.5 Before the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.

6.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

6.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

- 6.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 6.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.
  - 6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Products and Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials, or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
  - 6.9.3 Automobile liability, bodily injury, and property damage with a limit of \$1 million per occurrence including owned, hired, and non-owned autos.
  - 6.9.4 Professional Liability (Errors and Omissions Liability), the Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence Professional Liability insurance.
7. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after the receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
8. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth in the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.
9. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
  - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
  - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
  - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

10. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a “party” or “parties” in the Mesa Standard Terms and Conditions. The Term is referred to as the “term” in the Mesa Standard Terms and Conditions.
11. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
12. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
- Exhibits to this Agreement are the following:
- (A) Scope of Work
  - (B) Pricing
  - (C) Mesa Standard Terms and Conditions
  - (D) Other
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.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

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

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

**CITY OF MESA, ARIZONA**

**CONTRACTOR NAME**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

REVIEWED BY:

By: \_\_\_\_\_  
Nicole Nelson  
Procurement Officer I

DRAFT



**EXHIBIT 1**  
**DRAFT AGREEMENT**

**EXHIBIT A**  
**SCOPE OF WORK**

*The Scope of Work and Vendor Response will be added here when Agreement is finalized.*

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**EXHIBIT 1**  
**DRAFT AGREEMENT**

**EXHIBIT B**  
**PRICING**

*Attachment A Pricing will be added here when Agreement is finalized.*

DRAFT

**EXHIBIT 1**  
**DRAFT AGREEMENT**

**EXHIBIT C**  
**MESA STANDARD TERMS AND CONDITIONS**

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

**EXHIBIT 1**  
**DRAFT AGREEMENT**

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

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter collectively the “Contractor Immigration Warranty”).
  - ii. A breach of the Contractor Immigration Warranty will constitute a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
  - iii. To ensure Contractor and its subcontractors are complying with the Contractor Immigration Warranty, the City retains the legal right to conduct random verification of the employment records of any Contractor or subcontractor employee who works on this Agreement, including the inspection of the papers of such employees. Contractor agrees to assist the City in regard to any random verification performed.
  - iv. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274a and 274b of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote 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. In performance under this Agreement, Contractor and Contractor’s personnel will comply with applicable provisions of the following laws (as amended): Title VII of the U.S. Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), and any other applicable non-discrimination laws and rules.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
- f. **Israel Boycott Divestments.** In accordance with the requirements of A.R.S. § 35-393.01, if the Agreement requires Contractor to acquire or dispose of services, supplies, information technology or construction with a value of \$100,000 or more, then, by entering into this Agreement, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of goods and services from Israel.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

10. **SALES/USE TAX, OTHER TAXES.**
- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement including, by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees, as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
  - b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due to the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*), and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial processes.
- a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
  - b. 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 methods that tracks the delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court-ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court-ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect all payroll, billing, or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or City offices, as determined by the City.
14. **BACKGROUND CHECK.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any

**EXHIBIT 1**  
**DRAFT AGREEMENT**

reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from the performance of services under this Agreement.

16. **DEFAULT.**

- a. A party will be in default of the Agreement if that party:
  - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
  - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
  - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or 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 will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety, or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give written assurance of its intent and ability to perform. In the event, demand is made, and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.

17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:

- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services or materials required under the Agreement from the open market, complete the required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

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

**EXHIBIT 1**  
**DRAFT AGREEMENT**

resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.

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

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

26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies represents the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement, and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City's real or personal property when such property is the responsibility of or in the custody of Contractor or its personnel.



**EXHIBIT 1**  
**DRAFT AGREEMENT**

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

**EXHIBIT 1**  
**DRAFT AGREEMENT**

employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members, or its employees are guilty of gross negligence or intentional misconduct.

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

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

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or facsimile. If provided by personal delivery, the receipt will be deemed effective upon delivery. If sent via certified or registered mail, the receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, or facsimile, the 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, supersedes all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.
43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated herein.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising before the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract, or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.
47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

**EXHIBIT 1**  
**DRAFT AGREEMENT**

48. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards ("PCI DSS") and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City's and/or any customer's credit card data in its possession, even if all or a portion of the services to the City are subcontracted to third parties.