

LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA AND  
SIERRA AUCTION INC.

THIS LINKING AGREEMENT (this "Agreement") is entered into as of January 8 2015 2014, between the City of Glendale, an Arizona municipal corporation (the "City"), and Sierra Auction Management Inc., an Arizona corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

A. On October 6, 2014, the City of Mesa, Arizona entered into a contract with Contractor to purchase the goods and services described in the Auctioneering Services Contract, Number 2014085, ("Contract") which is attached hereto as Exhibit A. The Contract permits its cooperative use by other governmental agencies including the City, as referenced in the City of Mesa, Arizona's "Standard Terms and Conditions," Exhibit C.

B. Section 2-149 of the City's Procurement Code permits the Materials Manager to authorize procurement through the use of a contract initiated by another governmental entity when that government entity's procurement actions complied with the intent of the City's purchasing procedures in City Code Sections 2-145 and 2-146 and such purchase is in the best interest of the City. The City believes these conditions are met for purposes of the Auctioneering Services Contract.

C. The City desires to contract with Sierra Auction Management, Inc. for supplies, goods or services identical, or nearly identical, to the supplies, goods or services they are providing the City of Mesa under the 2014085 Auctioneering Services Contract, Contractor consents to the City's utilization of the 2014085 Contract as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the goods and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Agreement, the parties agree as follows:

1. Term of Agreement. This Agreement is effective as of the date first set forth above and expires on September 30, 2017. The term may be renewed up to a maximum of two (2) one year periods.
2. Scope of Work; Terms, Conditions, and Specifications

- a) Contractor will provide City the identical supplies, goods or services Contractor provided the City of Mesa under the 2014085 Contract, as requested by the City in the proposal attached as Exhibit "A."
- b) Contractor agrees to comply with all the terms, conditions and specifications of the 2014085 Contract for the purposes of this Agreement, and the terms, conditions, and specifications are incorporated in this Linking Agreement by this reference. The "City of Glendale" shall be substituted for "End User" or similar references throughout the 2014085 Contract.

3. Compensation.

- a) City shall pay Contractor the same compensation the End User pays Contractor under the 2014085 Contract pursuant to Exhibit B page in the Exhibit A document.

[SIGNATURES ON FOLLOWING PAGE]

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

"City"

City of Glendale, an Arizona  
municipal corporation

By:   
Brenda S. Fischer, ICMA-CM, City Manager

"Contractor"

Sierra Auction Management Corporation, an  
Arizona corporation

By:   
Mark Feuerer, President

ATTEST:

  
Pamela Hanna, City Clerk (SEAL)

Approved as to Form

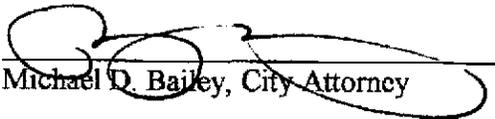
  
Michael D. Bailey, City Attorney

EXHIBIT A

City of Mesa Contract No. 2014085 - Auctioneering Services

# EXHIBIT A



October 7, 2014

Mark Feuerer  
Sierra Auction  
3570 Grand Avenue  
Phoenix, AZ 85019

via email: @mark.feuerer@sierraauction.com

Re: Request for Proposals #2014085  
Auctioneering Services

Dear Mark:

This letter is your firm's official notice of award with regard to the above entitled solicitation. Thank you for your patience as we worked through the evaluation process for this very important City contract. The Master Agreement (Blanket Purchase Order) is currently being processed and we will forward that document, along with the fully executed contract shortly.

This contract is valid for three (3) years, October 6, 2014 through October 5, 2017, with two (2), one (1)-year renewal terms available at the City's option. Your contacts for this contract will be Jim Ruiz (480-644-5666) with our Fleet Services Department, and Beth Thuringer (480-644-5365) with the Mesa Police Department. Please feel free to call me at (480) 644-2815 if you have any questions regarding this letter or the award. We look forward to working with you.

Sincerely,

*Sharon Brause*

Sharon Brause, CPPB, CPCP  
Senior Procurement Officer

c: Jim Ruiz  
Beth Thuringer  
Doug Fugate  
Bid File #2014085

20 East Main Street Suite 400  
PO Box 1466  
Mesa Arizona 85211-1466  
480.644.2301 Tel  
480.644.2655 Fax  
www.mesaaz.gov

## CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is made and entered into this 6th day of October, 2014, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Sierra Auction Management Inc., a(n) Arizona 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 2014085 ("Solicitation") on June 19, 2014 for AUCTIONEERING SERVICES, to which Contractor provided a response ("Response"); and
- B. The City selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/ materials described in the Solicitation and Response.

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

### TERMS & CONDITIONS

1. **Term.** This Agreement is for a term of **three (3) years** beginning on **October 1, 2014** and ending on **September 30, 2017**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions agreed upon by the Parties in accordance with this Section 1.
  - 1.1 **Renewal.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum renewal period of **two (2) one year periods**. Any renewal will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
  - 1.2 **Extension for Procurement Processes.** Upon the expiration of the initial Term of this Agreement, including any extensions permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work.** During the Term of the Agreement, Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A ("Scope of Work")** Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.
3. **Payment.**
  - 3.1 **General.** Subject to the provisions of the Agreement, the Contractor will be responsible for any sum(s) described in **Exhibit B ("Contract Amount")** in consideration of Contractor's performance of the Scope of Work during the Term.



# mesa·az

AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA CONTRACT NO. 2014085

CITY OF MESA, an Arizona municipal corporation ("City"),

Department Name	City of Mesa – Purchasing Department
USPS Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 E Main St, Suite 400 Mesa, AZ 85201
Attention	Sharon Brause, Senior Procurement Officer
Telephone	(480) 644-2815
Facsimile	(480) 644-2655

AND

SIERRA AUCTION MANAGEMENT INC., a(n) Arizona business entity/individual("Contractor")

Company Name:	Sierra Auction
USPS Address:	3570 Grand Avenue Phoenix, AZ 85019
Delivery Address:	3570 Grand Avenue Phoenix, AZ 85019
Attention:	Mark Feuerer, President
Telephone:	(602)242-7121, Ext. 109
Facsimile:	(602)246-1903
Email:	Mark.Feuerer@SierraAuction.com

4. **Cooperative Purchasing.** The City participates in cooperative purchasing with other governmental entities as set forth in the Mesa Standard Terms and Conditions S.38 that is attached to the Agreement as **Exhibit C**. ***If Contractor does not wish to allow access to the Solicitation and the Agreement by other governmental entities for a cooperative purchase, Contractor must have stated so in its Response.*** In the absence of a statement to the contrary in the Response, the Parties agree that it is assumed that Contractor wishes to grant other governmental agencies access to the Solicitation and the Agreement for cooperative purchasing.
5. **Requirements Contract.** Contractor acknowledges and agrees that the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.
6. **Insurance.** Contractor must obtain and maintain at its expense throughout the Term of the Agreement, at a minimum, the types and amounts of insurance set forth in this Section from insurance companies authorized to do business in the State of Arizona; the insurance must cover all operations and services performed 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 insureds, as evidenced by providing an additional insured endorsement.
  - 6.1 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 the indemnity promise(s) contained in the Agreement.
  - 6.2 City does not warrant that the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of the performance of the Scope of Work 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.
  - 6.3 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement including any warranty periods.
  - 6.4 Prior to the execution of the Agreement, Contractor will provide City with a Certificate of Insurance (using an appropriate ACORD 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 that are required under the Agreement.
  - 6.5 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, Contractor agrees that no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
  - 6.6 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
  - 6.7 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

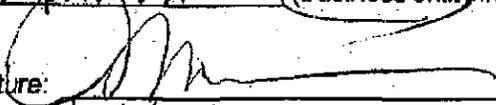
- 6.8 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- a. Worker's compensation insurance in accordance with the provisions of Arizona law. IF CONTRACTOR OPERATES WITH NO EMPLOYEES, CONTRACTOR MUST PROVIDE WRITTEN PROOF TO THE CITY HE/SHE HAS NO EMPLOYEES. IF EMPLOYEES ARE HIRED DURING THE COURSE OF THIS AGREEMENT, CONTRACTOR MUST PROCURE WORKER'S COMPENSATION IN ACCORDANCE WITH THE PROVISIONS OF ARIZONA LAW.
  - b. Commercial general liability in amounts not less than \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage with endorsements to include broad form contractual, and broad form property damage.
  - c. Automobile liability, bodily injury and property damage with a combined single limit of \$1 million including owned, hired and non-owned autos.
  - d. CONTRACTOR shall supply CITY, and any cooperative partners, with a non-dealer physical damage coverage endorsement.
7. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the addresses listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions S.40 that is attached to the Agreement as **Exhibit C**.
8. **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.
9. **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.
10. **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.
11. **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.

12. **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.
13. **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.
14. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

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

Sierra Auctions Myntan Corporation (business entity/individual)

Signature:   
Title: President  
Printed Name: Mark Feuerer

City of Mesa, an Arizona municipal corporation

Signature:   
Title: Business Services Director  
Printed Name: Edward Quezada

**Exhibit List**

- A. Scope of Work
- B. Pricing
- C. Mesa Standard Terms & Conditions

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

1. **SCOPE OF WORK.** CONTRACTOR will be responsible for inventory services, record keeping, security, any day-to-day sales, warehousing, and protection from the elements, transporting of agency vehicles, equipment, firearms and surplus items to a secured auction site and auctioneering services in order to ensure the successful operation of the agency's surplus property operations. This shall include the removal of all agency decals and insignias from any vehicles and/or equipment and provide all labor to perform all sales transactions, advertising, collecting of funds, arranging title transfers and preparing/submitting the documentation for each transaction.
- 1.1 CONTRACTOR shall ensure all agency assets to be sold have been inspected to verify any extraneous or extra agency property that may be enclosed, attached, or otherwise not generally considered a part of the asset have been removed and returned to the agency.
- 1.2 CONTRACTOR shall maintain and keep accurate asset records for each item of agency property auctioned or sold. This is to include model number(s), serial number(s), asset tag number(s), date each item was auctioned / sold, and amount each item was auctioned / sold for.
- 1.3 The City reserves the right to conduct a site inspection of CONTRACTOR's location if deemed necessary.
2. **ON-LINE AUCTION OPTION.** The CITY may utilize CONTRACTORs comprehensive live web-based auction services on an as-needed, if needed basis. The CITY reserved the sole right to determine what auction method, online, live or a combination of the two, will be used to dispose of surplus items, in accordance with City, State and Federal law.
- 2.1 CONTRACTOR shall provide a fully hosted website. CONTRACTOR shall provide CITY with a link from its auction domain (e.g. MesaSurplus.org) to CONTRACTOR's website, which allows bidders direct access to CITY auctions, with minimal clicks and is seamless to the bidding community. The CITY must have the ability to view a detailed bid history of its auctions at any time during or after the close of an auction. CONTRACTOR shall actively market auctions to prospective bidders in order to expand CONTRACTOR's bidders list.
- 2.2 Website shall have the ability to allow the CITY to manage the bidding process online, from creating auction item text and uploading photos to responding to bidder questions, blocking default bidders at the CITY's sole discretion and recording payment data as well as having the option to have CONTRACTOR manage many of these areas. Ease of program administration, including but not limited to posting and marketing of auctions, receiving payment from bidders, invoicing, etc. CONTRACTOR shall provide any initial as well as ongoing webinar training and documentation to the CITY and bidders. The CITY must have access to bidders profile information in order to contact bidder via phone, fax, or email.
- 2.3 CONTRACTOR shall provide easy access, high responsive technical support and customer service. CONTRACTOR shall endeavor to respond within one (1) hour and must respond no later than twenty four (24) hours to all inquiries by CITY, its cooperative partners, and buyers. Technical issues identified by CONTRACTOR, which have the potential to disrupt business, must be communicated to CITY and its cooperative partners within one (1) business day after identifying issue.
- 2.4 CONTRACTOR shall have an option for a CITY pays or a Buyer pays auction fees arrangement or a combination of the two. The on-line auction system must be able to automatically notify CITY and the winning bidder of awarded auction item(s).
- 2.5 CONTRACTOR will be responsible for the payment of all costs associated with the auction from fees CONTRACTOR fees charges and receives from CITY. An itemized expense schedule and fee report shall be prepared for each auction and submitted to CITY. CONTRACTOR will only be paid

its auction fees on items that have sold and where buyer has paid for the item(s).

- 2.6 CONTRACTOR shall provide a usage report to the City of Mesa Purchasing Office on a quarterly basis that clearly identifies all cooperative partners that are utilizing this contract. The report must clearly identify using agency / usage.
3. **CONTRACTOR RESPONSIBILITY.** CONTRACTOR shall be responsible for scheduling pick up of all vehicles, equipment, firearms and surplus property for auction within forty eight (48) hours of receiving notification from CITY. With the exception of firearms, the CITY will provide spreadsheet listing of all items to be auctioned to CONTRACTOR as well as vehicle titles, keys and other related items. CONTRACTOR is responsible for processing titles for the buyers and submitting "sold" notice of vehicles/equipment to Motor Vehicle Department (MVD) on the same day of the auction date.
4. **SELLING OF FIREARMS.** The CITY will transfer firearms eligible for auction to the CONTRACTOR in two (2) different manners, depending upon which Division the firearms originate:
- a. CONTRACTOR shall be responsible for picking up of firearms from agency.
  - b. CONTRACTOR shall explain how they intend to account for / track firearms, including firearms that may not have been manufactured with serial numbers. With regards to firearms that do not have a serial number: certain firearms that were manufactured prior to the Gun Control Act of 1968 did not have serial numbers. These firearms can be resold by any Federal Firearms Licensee (FFL). Firearms that have the serial number which is altered, defaced or removed cannot be resold and will be destroyed by the Police Department.
  - c. CONTRACTOR shall be required to maintain a federal firearms license and is therefore required to perform FBI background checks on anyone purchasing a firearm. The CITY will NOT allow "subcontractors" or "third parties" to engage in selling of firearms.
  - d. CONTRACTOR shall be required to take all legal firearms from CITY, regardless of condition, including functionality, completeness, condition, etc.
  - e. Firearms originating from the Police Asset Forfeiture Unit (AFU) may be transferred to the auction CONTRACTOR in groups of ten (10) firearms;
  - f. Firearms originating from the Police Evidence Section may be transferred to the auction CONTRACTOR in groups of fifty (50) firearms.

CONTRACTOR will be required to administer the sale of all firearms. It is the intention of the CITY that the CONTRACTOR will take possession of the firearms and store, list, sell and transfer firearms according to the CITY's requirements and ATF guidelines.

The CITY will provide a report of the firearms intended for auction. Said report will list the unique firearm "lot number", along with the make, model and serial number (if available) of all firearms processed and provided for auction. The report may list the caliber of firearm. If available, the report may list the police case number and the unique property item number for each firearm. Firearms from AFU will be sold individually and records shall be maintained regarding the sale price and purchaser of each individual firearm. Records must include name of purchaser, address, etc. A copy of these records shall be provided to the AFU after the sale of the firearm. Firearms from the Evidence section will also be sold individually, and sale information provided to the CITY.

**g. Firearms.** Sierra Auction has been managing the liquidation of government seized and surplus firearms for several years. Recent changes to state laws requiring government entities to sell/trade their firearms means that government entities can now seamlessly utilize in-place auction contracts to maximize their revenues by liquidating these assets through Sierra. At no time is buyer base made aware of where firearms came from and a strict anonymity policy is adhered to throughout the company. Sierra has so many other governmental agencies requesting the same anonymity, it is virtually impossible for a buyer to determine or confidently guess where the firearm came from. When Sierra has a buyer (either in person or online) who resides outside of Arizona, Sierra follows all state and federal laws with regarding to transferring the firearm. Upon payment for the firearm, Sierra will only ship to a licensed firearms dealer in the state in which the buyer resides. It is up to the buyer to identify and inform their preferred FFL holder in their state and then it is up to the selected FFL to provide Sierra with a copy of their valid their license. For additional national security in the sale of firearms, Sierra Auction does not engage in the sale of firearms to buyers who reside outside of the USA.

- **License Requirements** - Sierra Auction holds a Class 3 Federal Firearms License (Type 1 with NFA Tax Stamp) for our Phoenix location as well as an FFL for our Tucson location. In addition, Sierra's insurance liquidation subsidiary, G & G Salvage & Liquidation also holds an FFL. Please see attached license for the Phoenix location.
- **Safety Procedures** - Sierra Auction has incorporated a stringent set of procedures which must be followed in order to work with the firearms asset class. Sierra Auction Firearms Personnel are trained over the course of several auctions to follow processes and procedures. See below:
- **Transportation** - Consignor has the option to deliver to Sierra's Phoenix location. Sierra is well-equipped to legally and safely transfer any and all firearms from the county's facilities to our location on Grand Avenue. If Sierra provides transportation services, firearms will be placed in a locked cage within Sierra's truck. Inventory is completed at the point of transfer. Our logistics team offers the capability to move large quantities of long guns via our box truck or, in the event of smaller quantities, our full size van can be utilized. Both have room for locking cages in which to transport firearms according to ATF regulations. It is critically important that serial numbers are double-checked for accuracy when Sierra receives the firearms and therefore, like other governmental agencies we work with, requests the City to provide personnel to work with our staff to ensure accuracy of the check-in process. In the event the City declines this request, Sierra will provide a discrepancy report within 48 hours of receiving the firearms.
- **Receipt** - Upon transfer, Sierra verifies firearm description to include serial number with the City's list. Once at Sierra's facility, a barcode is assigned and photographs are taken. All firearms are entered into an ATF log within 48 hours. As an additional check, Constable Jesse Bollinger from Gila County visits Sierra on the Tuesday before every firearms auction and inspects each and every firearm for issues that could get overlooked, such as barrel length, serial number legibility, and other potential causes that might deem the firearm unsellable.
- **Safeguarding/Storage** - Once the firearms safely reach our facility and have been properly logged into our record books, the firearms are stored for processing in one of several locations. Our 150 square-foot dead-bolted storage room securely stores over 500 firearms. The room has a security camera facing its only entrance/exit and activity surrounding the door is recorded daily. Sierra's indoor facility also has a security alarm system monitored by a third party (JR Markson Security) with motion detectors where all of the guns are stored. For more valuable firearms, Sierra offers two large gun

safes that hold 25-50 firearms each. Again, security cameras face the safes and record activity.

- **Background Checks** - Sierra Auction has more rigid rules regarding background checks than what is required by law. After a buyer pays for his firearms, Sierra follows all Federal standards for resale of firearms and runs all buyers through the National Instant Criminal Background Check System (NICS) and determines whether a buyer is eligible to buy firearms. If the result of the background check comes back in a "Delayed" status, the buyer has until Thursday following the auction to wait for a "Proceed" status update, which the NICS system will provide to Sierra. The firearm remains paid for and in Sierra's custody during this time. On the Friday following the auction if the NICS system does not contact Sierra on a follow up from a "Delayed" status, Sierra will refund the payment to the buyer and will hold the firearm for the next auction. If the NICS background check results in a "Denied" status, either immediately or after a "Delayed" status is given, Sierra refunds the customer's payment, less \$200 penalty for bidding in spite of the inability to pass a background check and the firearm is held for the next auction.
- **Record Keeping Requirements** - Sierra Auction follows all Federal and State standards for record keeping requirements and record acquisitions and dispositions in accordance with 27 CFR 478.121, 478.22 and 478.125. Unless otherwise exempted by Federal law, Contractor shall use ATF Form 4473 to record all firearms transactions and keep its "bound book" properly up to date. Sierra utilizes an ATF approved software platform (FFL Tools by Lewis Tactical, version 1.0.5.4) that significantly reduces the "human error" when processing background checks and keeping accurate accounting of the transfer of firearms. If Sierra Auction sells more than one handgun to any non-FFL holder during a period of five consecutive business days, the sale is reported on ATF Form 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, by the close of the business day on which Sierra sells the second handgun. Sierra forwards a copy of the ATF Form 3310.4 to the ATF office via email and another copy is forwarded to Maricopa County Sheriff's Office. Sierra also complies with the ATF MSR program for long guns.

5. **TRANSPORTING.** CONTRACTOR shall arrange the transfer of vehicles, equipment, firearms and surplus property from CITY facilities to the auction/storage site within five (5) business days after notification. The Police Department may elect to deliver seized vehicles and surplus property to CONTRACTOR's site. CITY shall notify CONTRACTOR by telephone of vehicles, equipment, firearms and surplus property to be sold at auction as well as provide a detailed list of vehicles and equipment including old equipment number, make, model, year, and mileage. Consideration for using transport services to obtain best pricing for CITY is desired. The CITY reserves the right to transport vehicles and equipment if it's determined to be in the CITY's best interest.
- 6.1 **VEHICLE PREPARATION.** CONTRACTOR shall be responsible for the careful removal of all CITY decals and CITY identification numbers on CITY vehicles and/or equipment prior to sale. CONTRACTOR shall be responsible for the removal of push bars and prisoner divider screens on public safety vehicles. Items removed may be auctioned or returned to CITY at CITY's request. CONTRACTOR shall ensure the maximum financial benefit to the agency by cleaning the interior and exterior of all vehicles and equipment.
6. **REGULARLY SCHEDULED AUCTIONS.** CONTRACTOR shall have and conduct regularly scheduled public sales and shall provide the CITY with a listing of dates and times of scheduled sales. CONTRACTOR shall be a valid Arizona Automobile licensed dealer, and provide notary services.
7. **SECURED FACILITY.** CONTRACTOR shall maintain a secured facility and auction site located in the metro Phoenix area and shall be responsible for the protection of CITY property assigned to their

facility before and after the each auction. CONTRACTOR shall handle any disputes that arise during and after the auction.

**Storage & Facilities.** Sierra has gone to great lengths to ensure our consignors' property is sufficiently and safely stored while on the company's premises.

*Outdoor:*

- *Sierra has 12+ acres of completely secured property conveniently located in the City of Phoenix at the intersection of Grand Avenue, Indian School Road, and 35th Avenue. This acreage has the ability to hold 1,500 vehicles, over 2,000 pallet-sized surplus lots, and enough additional space to provide long-term storage to any and all of the current 50+ government agencies with whom we contract. The perimeter of the property is double-fenced, with the interior fence being electric for additional security. Unlike our competition, ample parking is available onsite and within the confines of our secured fencing. Overflow parking is available nearby, again with a monitored fenced parking lot within walking distance of the main facility.*
- *Sierra utilizes a 16-camera security system strategically placed around the interior and exterior of the property that records all day-to-day activity and stores the history of activity on location. In addition, eight additional cameras focus in on the firearms administration and front parking area for additional security.*
- *Sierra has 9,500 square feet of outdoor covered storage within the fence perimeter. The fence is remotely monitored 24/7, with the ability to dispatch police upon breach.*
- *Sierra carries at our own expense Dealer's Blanket General Liability Insurance providing additional protection against consignors' vehicle damage by fire, theft, vandalism, collision, or acts of God while on Sierra's property. It also covers bodily injury in certain circumstances. This level of insurance is critical for the protection of consignor's vehicles and has proven its value during the hailstorm of October 2010. When many vehicle storage lots were left unprotected, vehicles on Sierra's lot were 100% covered for damage that occurred – a loss that cost \$600K.*

*Indoor:*

- *Sierra's 10,500 square foot air-conditioned warehouse and office is secured and monitored by a third party alarm company, JR Markson Security.*
- *Security cameras are placed strategically where the highest risk of theft and vandalism might occur.*
- *Sierra's auction preview, auction day, and auction load-out security staff consists of no less than 30 people who are trained to care for and properly distribute only those items buyers have purchased, while keeping a watchful eye on goods during preview day.*
- *Sierra employs two (2) uniformed and armed off-duty Phoenix Police officers for additional security presence during auctions*

8. **DAMAGE AND VANDALISM.** CONTRACTOR shall notify the Fleet Services Division or Police Department personnel, as applicable, if damage is caused to CITY property while in CONTRACTOR's possession. CONTRACTOR shall be liable for the cost to repair such damage, or pay compensatory damages equal to the damage incurred.

9. **ADVERTISING.** CONTRACTOR shall coordinate pre-auction requests to view property, including answering questions from potential bidders. CONTRACTOR shall, at a minimum, place a Notice of Public Auction in at least one newspaper (Arizona Republic or Tribune) two (2) weeks prior to the auction of CITY property. The notice shall contain a brief description of the types of items to be sold, the date, auction time and location. Advertising through the Internet is highly desired. In addition, CONTRACTOR must submit a proposed advertising/marketing plan with proposed submittal, which would maximize participation and revenue for vehicles sold. CONTRACTOR shall be responsible for advertising each surplus auction according to ASRS statute. In addition, CONTRACTOR must describe the plan for advertising/marketing the use of this contract to potential bidders.

For on-line solution, it is not a requirement to post/advertise in a local newspaper per A.R.S. 12-945, "Sale of Property". Viewing items in CONTRACTOR's on-line auction "catalog" will suffice.

10. **BIDDER REGISTRATION.** CONTRACTOR shall require all bidders to be registered prior to the auction in order to bid. Bidders should be allowed to sign up and view the items before bidding starts. All CITY items are to be sold as is/where is with no warranties expressed or implied.

CONTRACTOR must adhere to the Public Consignment Auction Dealer (PCAD) licensing regulations. CONTRACTOR is reminded that they must adhere to the current law relating to PCAD as set forth in the current language of ARS 28-4410-01. The following is a link to this State Statute:

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/28/04410-01.htm&Title=28&DocType=ARS>

11. **DOCUMENTATION AND RECORD KEEPING.** CONTRACTOR shall be responsible for coordination of all auction record keeping activities. CONTRACTOR shall provide a complete itemized accounting to the CITY of all records related to the sale. As a minimum, these records shall include: a copy of the advertisement, CITY identification numbers, serial numbers, VIN numbers, prices paid for each vehicle, commission charged, towing costs, parts used, detailing/cleaning and decal removal, and other services provided. For City of Mesa Fleet Services and CITY Warehouse locations, the payment check and a copy of the reconciliation statement shall be submitted to Customer Service, Attn: Customer Service Supervisor, P.O. Box 1466, Mesa, AZ 85211-1466, within thirty (30) calendar days after the sale.

Reports must be able to compare historical auction data (items sold and revenue generated) to current auction activity. It shall be CONTRACTOR's responsibility to coordinate with each other agency utilizing this contract with regards to documentation, record keeping and reconciliation of payment.

12. **SURPLUS PROPERTY METHOD OPTION.** The methods employed in working with the many City departments for the pickup of surplus property have been developed over time through cooperative efforts and have been deemed the most efficient and cost effective method of surplus asset recovery available.

One such system should the City choose this method is that each City department receives a sufficient quantity of preprinted, pre-numbered barcode labels. Labels are then affixed by City personnel to each asset pending pick-up for auction. Barcode inventory numbers are then recorded on a spreadsheet template which includes, but is not limited to, the description and quantity. In addition, each individual inventory spreadsheet contains the Department Number, Department Name, Contact Name, and Phone Number. Departments, in turn, forward completed spreadsheets to the City of Mesa internal coordinator.

The Coordinator forwards the finalized spreadsheet to Sierra's: [deliver@sierrauction.com](mailto:deliver@sierrauction.com) address, which is distributed to our logistics department, administrative team, and managerial staff. Sierra's logistics dispatcher coordinates with the appropriate County department within 24 hours to arrange for the pickup of surplus items; working to schedule the transportation of multiple departments' assets.

As an alternative, Sierra can pick up the assets without pre-barcoding the assets and, based solely on the list provided to Sierra from the City, can confirm and acknowledge the list of assets as well as any discrepancies

13. **CITY'S RIGHTS.** The CITY reserves the right to add and delete vehicles, equipment and surplus property from the auction up to the day of the auction, to visit the storage facility during normal working hours to inspect the thoroughness of preparation prior to sale, to attend each auction at no charge, and the right to set minimum bids on CITY property.

14. **FEE STRUCTURE.** CONTRACTOR shall, as its compensation for Auctioneering services, receive a commission based on a percentage of gross sales proceeds generated from CITY surplus, plus any approved fee as outlined in the Pricing and Compensation section (EXHIBIT B).

For Police Department Asset Forfeiture sales, the payment check and a copy of the reconciliation statement shall be submitted to: Asset Forfeiture Commander. For Police Department weapon sales, if any, the payment check and a copy of the reconciliation statement shall be submitted to: Property Evidence Supervisor.

15. **PAYMENTS.** For City of Mesa Fleet Services Department, CONTRACTOR shall submit a copy of the reconciliation and payment to designated name and address provided in the in Documentation and Record Keeping (Section 11) less any commissions and fees within thirty (30) calendars days following the sale of CITY surplus property. For CITY vehicles and equipment, a copy of payment check and reconciliation statement must be sent to the Fleet Services Director, PO Box 1466, Mesa, AZ 85211-1466.

For Police Department property, CONTRACTOR will collect and remit all appropriate sales tax, and separately account for and remit police auction proceeds to the appropriate Police area for firearms and vehicles referred by PD within thirty (30) calendar days following each auction as listed below. Remittance must include payment and a copy of the reconciliation statement.

Mesa Police Department  
Attn: Mesa Police Department  
P.O. Box 1466  
Mesa, AZ 85211-1466

Mesa Police Department  
Attn: Evidence Section Supervisor  
P.O. Box 1466  
Mesa, AZ 85211-1466

Mesa Police Department  
Attn: Asset Forfeiture Commander  
PO Box 1466  
Mesa, AZ 85211-1466

16. **NON-EXCLUSIVE CONTRACT.** This is a non-exclusive contract. The City does not guarantee any minimum or maximum quantities or revenue to CONTRACTOR.

EXHIBIT B

Sierra Auction Management Corporation - Pricing Sheets

**EXHIBIT B  
PRICING**

<b>On-site Auctions</b>		<b>Seller's Prem.</b>	<b>Buyer's Prem.</b>
1.1	Misc. surplus Items	1.9%	12%
1.2	Motor Vehicles (standard vehicles, up to and including 1 ton size)	3.4%	12%
1.3	Motor Vehicles (heavy equipment, over one ton size)	1.9%	12%
1.4	Firearms	6.9%	12%

1.5	Transportation Fee - MESA ONLY*		
	Cost of Pickup Truck, flat fee per tow (vehicles only)	\$	45.00
	Cost of Flatbed Truck, flat fee per tow (heavy equipment)	\$	100.00
	Cost of Box Truck (24 FT), flat fee per tow (per stop, surplus only)	\$	150.00
	Cost of 45' Tractor Trailer or Flatbed, flat fee per tow (billed by 3 <sup>rd</sup> party)		ACTUAL COST

1.5.1	Transportation Fee		
	Cost of Labor, per hr. / per person	\$	40.00
	Cost of Pickup Truck, per hr.	\$	40.00
	Cost of Flatbed Truck, per hr.	\$	95.00
	Cost of Box Truck (24 FT), per hr.	\$	35.00
	Cost of 45' Tractor Trailer or Flatbed, per hr. (billed by 3 <sup>rd</sup> party)		ACTUAL COST

1.6	Decal Removal		
	Picture 1, per vehicle	\$	50.00
	Picture 2, per vehicle	\$	125.00
	Picture 3, per vehicle	\$	125.00
	Door, per vehicle	\$	25.00
	Full Vehicle, per vehicle	\$	125.00

1.7	Detail Service		
	Motor Vehicles (standard vehicles, up to & including 1 ton size); per vehicle	\$	25.00
	Motor Vehicles (heavy equipment, over one ton size); per vehicle	\$	75.00

1.8	Additional Equipment Fee		
	Forklift Delivery, each		FREE
	Forklift Use/Operator, per hr.		FREE

	Removal of Push Bar, each	\$	25.00
	Removal of Prisoner Screen, each	\$	25.00
	Duplicate Key, each		\$50.00 standard / \$95.00 chip key
	Tire Repair, each	\$	15.00
	Replacement Battery, each	\$	60.00

1.9	Fees	
	"Other" Hourly rate, only upon approval from Department prior to commencing. (This fee is for use in making improvements to an asset that would increase the value of sale). (per hr.)	\$ 35.00

\*\*\$50.00 for standard key / \$95.00 for "chip" key

<b>Online Auctions</b>		Seller's Prem.	Buyer's Prem.
2.1	Online Purchases	-0.1%	12%

**Other fees (if applicable)**

FEE	UNIT	PRICE
On-line Bidder fee (buyer pays)	per winning bid	\$35 per vehicle 1% heavy equipment 5% "other"
Credit Card fee (buyer pays)	per winning bid	3%
On-line payment fee (buyer pays)	per winning bid	0%
Flash bar & security equipment removal	per vehicle	\$70.00
Vehicle battery replacement, non-standard (Heavy)	per vehicle	\$90.00
Gas (minimum 2 gallons)	per gallon	\$4.00
Paint (black & white units painted a single color)	per unit	\$350.00
Hidden compartment welding	per unit	\$150.00 & up
Vehicle appraisal	Per unit	\$25.00
Personal property appraisal	per hour	\$85.00
Authentication/quality testing fee for precious metals	per piece	\$5.00
Title insurance and transfer fee (buyer pays)	per vehicle	\$40.00
Parking (buyer pays)	per vehicle	\$0.00

## EXHIBIT C

City of Mesa, Arizona - Standard Terms and Conditions

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

- S.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.
- S.2 SUBCONTRACTING.** Contractor may not subcontract work 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 shall comply with its provisions. Further, all agreements between Contractor and its subcontractors shall provide that the terms and conditions of this Agreement be incorporated therein.
- S.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 shall be null and void and in such event the City shall have the right at its option to terminate the Agreement. No granting of consent to any assignment shall relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.4 SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.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 shall create, any benefits, rights, or responsibilities in any third parties.
- S.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.
- S.7 AMENDMENTS.** There shall be no oral changes to this Agreement. This Agreement shall 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.
- S.8 TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
- S.9 COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future Federal, State and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and shall comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor Personnel to achieve compliance prior to the Effective Date. Upon request, Contractor shall 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 shall require a drug-free workplace for all Contractor Personnel working under this Agreement. Specifically, all Contractor Personnel who are working under this Agreement shall be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor Personnel and shall 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 or its agents to inspect applicable personnel records to verify such compliance. Contractor shall ensure and keep

appropriate records to demonstrate that all Contractor Personnel have a legal right to live and work in the United States.

- (i) Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
  - (ii) A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
  - (iii) The City retains the right to inspect the papers of all Contractor Personnel who provides Services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
  - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
  - (v) Neither Contractor nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable Federal, State and local laws and executive orders regarding employment. Contractor and Contractor Personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. §35-392, the Contractor shall 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.

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

- a. Contractor shall be responsible for 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.
- 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.

**S.11 AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of Services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.

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

**S.13 AUDITS AND RECORDS.** Contractor shall preserve the records related to this Agreement for five (5) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor shall permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

**S.14 BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor Personnel who would perform Services under the Agreement or who will have access to

the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately.

**S.15 SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City shall have final authority, based on security reasons: (i) to determine when security clearance of Contractor Personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor Personnel; and (iii) to determine whether or not any individual or entity may provide Services under this Agreement. If the City objects to any Contractor Personnel for any reasonable cause, then Contractor shall, upon notice from the City, remove any such individual from performance of Services.

**S.16 DEFAULT.**

- a. A party shall be in default if that party:
  - (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
  - (ii) Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) days;
  - (iii) Conducts business in an unethical or illegal manner; or
  - (iv) Fails to carry out any term, promise, or condition of the Agreement.
- b. Whenever the City in good faith has reason to question Contractor's intent to perform, the former party may demand that the other party give a written assurance of its intent to perform. In the event that the demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

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

- a. The non-defaulting party may terminate the Agreement, and the termination shall be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by (i) requiring immediate reimbursement to the City (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security; if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including but not limited to administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party shall have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- d. Neither party shall be liable for incidental, special, or consequential damages.

**S.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.

**S.19 TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) days written notice.

**S.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.

**S.21 TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City shall 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) days prior to the stated termination date.

**S.22 PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor shall be entitled only to payment for those Services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City shall make final payment within thirty (30) days after the City has both completed its appraisal of the Materials and Services provided and received Contractor's properly prepared invoice.

**S.23 NON-WAIVER OF RIGHTS.** There shall 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, shall not release the other party of any of the warranties or other obligations of the Agreement and shall not be deemed a waiver of any such rights or remedies.

**S.24 INDEMNIFICATION/LIABILITY.**

a. Indemnification, General. To the fullest extent permitted by Law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the Services provided by Contractor Personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor Personnel; and (iii) Contractor or Contractor Personnel's failure to comply with or fulfill the obligations established by this Agreement.

b. Contractor shall update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.

c. The City assumes no liability for actions of Contractor and shall not indemnify or hold Contractor or any third-party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.

**S.25 WARRANTY.** Contractor warrants that all Services will be performed in a good, workman-like and professional manner. If any Materials or Services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide Materials or redo such Services until in accordance with this Agreement and to the City's reasonable satisfaction.

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

**S.26 THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor shall do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and shall at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.

**S.27 NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of Materials or Services or any Materials or Services at all under this Agreement and acknowledges and agrees that the Materials or Services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but shall not bind it to purchase, accept, or pay for Materials or Services which exceed its actual needs.

**S.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 shall not be used or released by Contractor or any other person except with prior written permission by the City.

**S.29 USE OF NAME.** Contractor shall not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.

**S.30 CONFLICT OF INTEREST.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which

the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.

- S.31 FOB DESTINATION, FREIGHT PREPAID AND ALLOWED.** Title shall pass at destination, and seller shall pay the freight and be responsible for any claims.
- S.32 RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these Services and such loss, injury, or destruction shall not release Contractor from any obligation hereunder.
- S.33 SAFEGUARDING CITY PROPERTY.** The Contractor will be responsible for any damage to City Real property or damage or loss of City Personal Property when such property is the responsibility of or in the custody of the Contractor or its employees.
- S.34 WARRANTY OF RIGHTS.** The 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 the Contractor or third parties.
- S.35 PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor shall, without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and shall, 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 shall be 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 shall, at its expense and without limitation, either (a) modify the item so that it becomes non-infringing; or (b) procure for the City the right to continue to use the item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than five (5) years, and plus any additional costs the City may incur to acquire substitute supplies or services.
- S.36 CONTRACT ADMINISTRATION.** The contract shall be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract shall be referred to an administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrator(s).
- S.37 FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected shall within five (5) days notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected shall 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 shall 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 shall delays caused by a force majeure extend beyond one hundred-twenty (120) days from the scheduled delivery or completion date of a task.
- S.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 (S.A.V.E.) cooperative. Any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the 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.

If required to provide services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The district shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing

body fingerprinting policies of each individual school district/public entity. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

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

- S.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.
- S.40 NOTICES.** All notices to be given pursuant to this Agreement shall be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or sent via facsimile. If provided by personal delivery, receipt shall be deemed effective upon delivery. If sent via certified or registered mail, receipt shall be deemed effective three (3) days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt shall be deemed effective two (2) days after the sending thereof.
- S.41 GOVERNING LAW, FORUM.** This Agreement shall be 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 shall be Maricopa County, Arizona.
- S.42 INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, shall supersede all prior oral or written agreements, if any, between the parties, and shall constitute the entire agreement between the parties with respect to the work to be performed.
- S.43 PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
- S.44 SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall 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.
- S.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, shall survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, Termination, or other expiration of this Agreement shall not release any party from any liability or obligation arising prior to the date of termination.