

**CITY OF MESA
PHOTO SAFETY ENFORCEMENT PROGRAM SERVICES AGREEMENT**

THIS AGREEMENT made this 3rd day of December, 2018 between AMERICAN TRAFFIC SOLUTIONS, INC. doing business as Verra Mobility (herein, "Contractor"), with its principle offices at 1150 N. Alma School Road, Mesa, Arizona 85201, and The CITY OF MESA, ARIZONA (herein "City") a municipal corporation of the State of Arizona with principal offices at 20 East Main Street, Mesa, Arizona 85201 (collectively the "Parties" or individually as a "Party").

RECITALS

WHEREAS, the City has operated a Photo Safety Enforcement Program (the "Program") under agreements with Contractor since 2006; and

WHEREAS, the City desires to continue certain aspects of the Program; and

WHEREAS, the City has determined pursuant to the City's Procurement Rules that Contractor is a Sole Source provider of the services desired herein; and

WHEREAS, the Parties desire to enter into a new agreement for Contractor to provide Program services in a timely and acceptable manner.

THEREFORE, in consideration of the reciprocal promises contained in this 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. DEFINITIONS

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

"Acceptance" is the date the City and Contractor mutually agree an Approach is ready to begin monitoring traffic violations.

"Approach" is defined as one direction of travel of one or more lanes on a road or a traffic intersection.

"Citation" means a citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by the Axis™ System. For the purpose of the Agreement, the term "Citation" will also include notices of violation (notices sent to a vehicle's registered owner in connection with the Program).

"Portable Camera System" means a photo-traffic monitoring device consisting of a digital camera, strobe light and a traffic speed monitoring device capable of accurately detecting a traffic speed infraction on up to four (4) lanes and which records such data on an image of such vehicle. "Portable Camera System" shall, where the context requires, also include any Auto Patrol 3D solution in which the Axis™ System is installed. The Parties acknowledge that no photo enforcement vans (portable speed vans) will be utilized under this Agreement. The only type of Portable Camera System that may be used under this Agreement are portable photo enforcement units for use in school zones, the use and placement of which is at the City's sole discretion as set forth in this Agreement, including, but not limited to Section 13.

"Operational Time" means the actual time that a Portable or Stationary Camera System is monitoring traffic.

"Person" or "persons" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

"Stationary Camera System" means a photo-traffic monitoring device consisting of camera(s) (both the Axis RLC-300 and the Axis Live Video System, if required, and any upgrades to existing and new locations as mutually agreed to by the Parties, as described in *Exhibit A*, which may include the AutoPatrol™ Radar System) and a traffic monitoring device capable of accurately detecting a traffic infraction on up to four (4) lanes and controlled by up to two signals signal phases and which records such data on an image of such vehicle. "Stationary Camera System" shall, where the context requires, also include any enclosure or cabinet in which the Axis™ System is stationed and may include a Camera System capable of capturing both red light and speeding violations (known as Speed on Green or SOG).

"Violation" means, but is not limited to, any vehicle and driver entering an intersection as defined in A.R.S. § 28-601.7 against a red traffic signal in violation of A.R.S. § 28-645.A.2.A (failure to obey a traffic signal), and a violation of reasonable and prudent speed, A.R.S. § 28-701A (operating a motor vehicle greater than is reasonable and prudent).

2. CONTRACTOR SCOPE OF WORK

Contractor agrees to provide the scope of work identified in *Exhibit A*. In the event of any inconsistency between *Exhibit A* and the Mesa Standard Terms and Conditions, the language of *Exhibit A* will control.

3. CITY SCOPE OF WORK

The City agrees to provide the scope of work identified in *Exhibit B*. In the event of any inconsistency between *Exhibit B* and the Mesa Standard Terms and Conditions, the language of *Exhibit B* will control.

4. TERM AND TERMINATION

- a. The term of this Agreement shall be for five (5) years beginning February 28, 2019 ("Effective Date").
- b. Termination for Convenience. The City reserves the right to terminate this contract in part or in whole upon ninety (90) days written notice to Contractor. The City will be responsible for payment of only those goods and/or services that conform to the requirements of the Agreement and have been delivered and/or performed and accepted. In the event of termination under this Section 4(b) during the five (5) year term of this Agreement, the City will pay Contractor liquidated damages on a sliding scale as follows: (i) Cancellation during the first year of the Agreement entitles Contractor to a payment of \$120,000; (ii) Cancellation during the second year of the Agreement entitles Contractor to a payment of \$96,000; (iii) Cancellation during the third year of the Agreement entitles Contractor to a payment of \$72,000; (iv) Cancellation during the fourth year of the Agreement entitles Contractor to a payment of \$48,000; and (v) Cancellation during the fifth year of the Agreement entitles Contractor to a payment of \$24,000. The liquidated damages set forth herein shall be the only damages paid to Contractor for early termination (termination for convenience) under this Section 4(b). This Section 4(b) supersedes Section 19 of the Mesa Standard Terms and Conditions (*Exhibit D*).
- c. Upon termination of this Agreement for any reason, the Parties recognize that the City will have to process traffic law violations in progress and that Contractor must assist the City in this regard. Accordingly, the Parties shall take the following actions, and shall have the following obligations, which survive termination during the wind-down period: unless directed by the City not to do so, Contractor shall continue to process all images taken by the City before termination and provide all services associated with processing in accordance with

this Agreement, and shall be entitled to all Fees specified in the Agreement as if the Agreement were still in effect.

- d. Upon termination of this Agreement for any reason, at the request of the City, Contractor will remove Contractor-owned Camera Systems. The City shall have the right, at its sole discretion, to have Contractor remove any and all Camera Systems and Program equipment owned by the City and selected by the City for removal for a mutually agreeable fee; any removal of the Camera Systems and Program equipment must be in accordance with this Agreement.
- e. The City, in its sole discretion, reserves the right to procure the services set forth herein from other sources when deemed necessary and appropriate.
- f. Termination for Default. Termination for default will be in accordance with the Mesa Standard Terms and Conditions (*Exhibit D*). In the event a Party is in default of this Agreement as set forth in Section 16 of the Mesa Standard Terms and Conditions (*Exhibit D*) then the other Party may, at its option and at any time, provide written notice to the defaulting Party of the default. The defaulting Party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the Parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting Party to provide notice of the default does not waive any rights under the Agreement.

5. ASSIGNMENT

Neither Party may assign all or any portion of this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed

6. FEES AND PAYMENT

The City shall pay fees based on the pricing indicated in *Exhibit C* ("Fees") for services and approaches that have been accepted by the City. All pricing shall be firm for the duration of the Agreement except where otherwise provided by the specifications and shall include all transportation, insurance, and warranty costs.

The City shall only pay for Approaches that have been Accepted by the City. Monthly fees shall be prorated to the date of Acceptance.

Payment will be made to Contractor on a monthly basis within thirty (30) days after receipt of an itemized invoice from Contractor, less any deductions or assessments. Monthly invoices are to be submitted to the City on or before the 10th of each month for the preceding month. Date of mailing (postmark) or date of electronic delivery shall be the determinative date for all issues related to this paragraph.

The City will pay monthly fees for no more than five (5) Intersection Speed locations (as that term is understood by the Parties), even if additional locations are active, as set forth in *Exhibit C*.

7. PENALTIES

Contractor agrees to pay the City \$100.00 per incident per day for their failure to submit an invoice to the City by the later of: (i) the 10th of each month; or (ii) within five (5) business days of receipt from the City of the Court financial report detailing paid citations.

Contractor will prorate the amount due for any Approach with time out of service caused by Contractor that exceeds twenty-four (24) consecutive hours where said twenty-four (24) hour period includes eight (8) or more hours between the hours of 8:00am and 5:00pm, Monday through Friday

Contractor will prorate the amount due for any Approach that is out of service for one hundred-twenty (120) hours or more consecutively or cumulatively during a calendar month where such time out of service is caused by Contractor.

Any prorating done subject to this Section 7 shall be done in increments of one-day (twenty-four hour) periods.

The Parties acknowledge and agree that the City may deactivate or request that Contractor cease servicing any Camera System under this Agreement at any time, at the City's sole discretion, without penalty to the City. Following the deactivation of a Camera System, Contractor will: (i) continue to process any Citations already in progress; and (ii) at the request of the City, remove the Camera System in accordance with this Agreement for a mutually agreed upon fee to be paid by the City.

8. COMMUNICATION OF INFORMATION

Contractor agrees that all information obtained by Contractor through operation of the Axis™ System shall be made available to the City at any time during Contractor' normal working hours, excluding information exclusive to Contractor that would be deemed a trade secret or other confidential or proprietary information not reasonably necessary for the prosecution of Citations or the fulfillment of the City's obligations under this Agreement.

9. CONFIDENTIAL INFORMATION

No information given by Contractor to the City will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by Contractor. Provided, however, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable. Contractor shall not use any information acquired under this Agreement with respect to any Violations or the City's law enforcement activities for any purpose other than the Program.

The Parties shall not be restricted with respect to disclosure of any information, tapes, or documents electronically obtained, stored, or recorded relating directly to the Program or this Agreement in the event of a good faith response to any subpoena issued by a court of competent jurisdiction; provided further that in the event of any subpoena served upon a Party, the Party shall reasonably and fully respond at the Party's sole expense. Notwithstanding the above, nothing in this paragraph or in this Agreement shall require Contractor to disclose any proprietary, confidential, business, financial or technical information whatsoever to the City.

10. OWNERSHIP OF SYSTEM

It is understood by the City that the Axis VPS™ Program being provided by Contractor is, and shall forever remain, the sole property of Contractor unless separately procured from Contractor by the City. In order to carry out the purposes of this Agreement Contractor grants City a non-exclusive, non-transferable license to use the Axis VPS™ Program for the term of this Agreement. The Axis VPS™ Program is being provided to City only under the terms, and for the term, of this Agreement. Contractor acknowledges that the Stationary and Portable Camera Systems, except for the cameras located at Rhodes Junior High School, Ellsworth Rd. and Pecos Rd., Guadalupe Rd. and Carriage Lane, and any additional Camera Systems provided by Contractor for use by the City subsequent to the Effective Date of this Agreement, which are and shall forever remain the sole property of Contractor unless separately procured from Contractor by the City, are the property of the City. Relocation or reinstallation shall not affect the ownership of a Camera System. For those Camera Systems not owned by the City the City shall have the option to acquire from Contractor any or all poles and mounting pole bases from Contractor for the sum of one-dollar (\$1.00)

11. INSURANCE

Contractor shall maintain at all times during the term of this Agreement, coverage in the minimum

amount of \$5 million per occurrence for commercial general liability, including contractual liability. In addition, Contractor is required to have automobile liability coverage of at least \$1 million per occurrence. For all insurance coverage required under this Agreement, the City of Mesa, its agents, officials, representatives, and employees shall be named as additional insured. Prior to the execution of the Agreement, Contractor shall provide the City with a Certificate of Insurance and additional insured endorsement; the City reserves the right to request copies of any or all of the above policies, endorsements, or notices relating thereto. This will include workers compensation insurance in the statutory amount and employer's liability as outlined on a sample form, where applicable. All insurance certificates are subject to review and approval by the City's Risk Manager.

Contractor' insurance shall be primary of all other sources available. Contractor agrees that no policy shall expire, be canceled, or materially changed to affect the coverage available without thirty (30) calendar days advance written notice to the City.

The City shall be responsible for vehicle insurance coverage on any vehicles driven by City employees. Coverage will include liability and collision damage.

Contractor waives all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the services provided under this Agreement.

12. DISPUTE RESOLUTION

The Parties shall attempt to resolve, all disputes arising out of or in connection with this Agreement through good-faith negotiation between senior management of both Parties, followed, if necessary, within thirty (30) days by professionally-assisted mediation. Any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. Failing resolution through negotiation or mediation, any remaining dispute may be resolved in law or equity under the laws of the state of Arizona.

13. ADDITIONAL SERVICES

Additional systems and services, including handheld speed safety cameras, automated license plate reader cameras and school bus stop arm cameras may be added to this Agreement by mutual consent of the Parties in writing as an addendum or amendment to this Agreement. All other terms and conditions shall remain the same except those modified by the addendum or amendment.

14. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

15. PRIOR AGREEMENT SUSPENDED

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understanding, written or oral, between the Parties respecting the written subject matter.

16. AMENDMENT

No amendments, modifications, addendums, or alterations of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties.

17. CORRESPONDENCE BETWEEN PARTIES/NOTICES

Any notices or demand which under the terms of this Agreement or under any statute must or may be given or made by Contractor or the City shall be in writing and shall be given or made by personal service, telegram, first class mail, FedEx, or by certified or registered mail to the Parties at the following addresses:

City of Mesa, Arizona
PO Box 1466
Mesa, AZ 85211-1466
Attn: Procurement Administrator
With a Copy Submitted to:

American Traffic Solutions, Inc.
1150 N. Alma School Rd
Mesa, AZ 85201
Attn: Legal Department

Police Administration

City of Mesa, Arizona
PO Box 1466
Mesa, AZ 85211-1466
Attn: Police Traffic Lieutenant

18. Mesa Standard Terms and Conditions

Exhibit D 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. American Traffic Solutions, Inc., doing business as Verra Mobility, is referred to as "Contractor" in the Mesa Standard Terms and Conditions.

19. 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.

20. 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 (1) 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.


21. Headings

The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS)

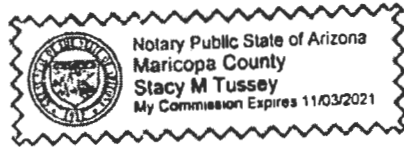
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date accepted by the City.

AMERICAN TRAFFIC SOLUTIONS, INC.


Elizabeth Caracciolo, Executive Vice President

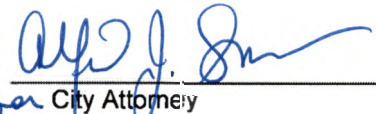
STATE OF ARIZONA)
)SS.
COUNTY OF MARICOPA)

On this 6th day of November, 2018, personally appeared before me Elizabeth Caracciolo, who being by me duly sworn did say that she is Executive Vice President for AMERICAN TRAFFIC SOLUTIONS, INC., a Kansas corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and acknowledged to me that said corporation executed the same.

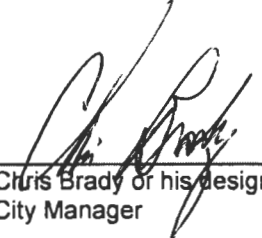



NOTARY PUBLIC
My Commission Expires:

Approved as to Form

By: 
for City Attorney

CITY OF MESA


Chris Brady or his designee
City Manager

Attested


By: 
City Clerk



Exhibit A
CONTRACTOR SCOPE OF WORK

Contractor shall provide the following:

- a) Provide Stationary and Portable Camera Systems for all existing Camera System locations.
1. Parties may agree from time to time to add or modify the quantities and locations where the Camera Systems are installed and maintained as permitted by the Agreement.
 2. Each Stationary Camera System shall operate on a 24-hour basis, barring downtime for maintenance and normal servicing activities.
 3. Where Approach characteristics allow, all straight-through approach Stationary Camera Systems shall be equipped so as not to require traffic interruption to implement speed violation monitoring. Intersection speed enforcement shall be operated as directed by the City.
 4. Contractor and the City will work together to determine the best upgrade path for all installed Camera Systems, including the upgrade of cameras, detection and the provision of enhanced video as described below. All upgrades and enhanced video systems must be mutually agreed to by the Parties.
 5. For any Camera System that can support the technology, Contractor shall provide video enhancements that permit City to perform remote video retrieval, live video viewing, and live video streaming at each red light and fixed speed Approach ("Enhanced Video Services"). The Enhanced Video Services will be provided at no cost to the City, however City shall be responsible for and pay for any data storage costs.
 6. Notwithstanding Section 8 and subsection jj of Exhibit A of this Agreement, City expressly acknowledges that Contractor is under no obligation to retain for any period of time any data produced by the Enhanced Video Services. City acknowledges that once it obtains a requested video file, it is responsible for any preservation, and associated storage requirements that may be required by law for said video file. City agrees that since the requested video file is not required by Contractor to continue to perform the services under the Agreement, the video file and any resulting public records shall be transferred to the City prior to the termination of the Agreement and the City shall serve as the records custodian for any said public records created. City agrees to assume responsibility to respond to, and if appropriate defend, at its sole expense, any requests for data or information obtained through the Enhanced Video Services, whether by formal public records request or otherwise. Contractor shall not be responsible for any storage, storage costs or public records requests pertaining to the historical video obtained through the Enhanced Video Services or the provision of access to the Enhanced Video Services to anyone other than City.
 7. City will comply with all federal, state, and local laws, ordinances, regulations and orders (collectively, "Laws") with respect to its access to and use of the Enhanced Video Services, including without limitation any Laws relating to data privacy or photo enforcement.
 8. The City agrees the Enhanced Video Services shall be subject to the following: (i) historical video is stored at the Camera site for a time period of approximately 30 days; (ii) requested video files pursuant to the Enhanced Video Services will be available for City download within 1 business day of request and will be available for retrieval for approximately 30 days; (iii) video file requests from historical video are limited to 30 minutes. If additional footage is required, additional requests may be made by City; and (iv) to avoid unintended data usage charges, streaming video is limited to 10-minute sessions. After 10 minutes, users will be prompted to reconnect.

- b) Contractor Personnel Assigned to the Program. It is essential that Contractor provide adequate experienced personnel capable of and devoted to the successful accomplishment of the work to be performed under this Agreement, including a Senior Account Manager assigned to work with the City. Contractor agrees not to remove or replace any such personnel, including the Senior Account Manager, without written notice to the City. The City shall have final approval of all Contractor personnel assigned to provide services under this Agreement.
- c) Provide a Service Center. Contractor will maintain a service center in the Phoenix metroplex ("Service Center"). Contractor must provide support personnel necessary to address citizen concerns by telephone and email at the Service Center, including IVR call center support for general program questions. The Service Center will continue to operate for the term of the Agreement and for ninety (90) days thereafter. Hours of operation for the Service Center will be Monday through Friday 8:00AM – 5:00PM excluding holidays.
- d) Provide Public Awareness for the Photo Safety Program. Contractor will promote public awareness of the Program through a Contractor website, Public Service Announcements, media releases, and promotion of the Program at the Mesa Police Department's Citizen Academies (if requested by the City). All media releases, public service announcements, and any communications with the public regarding the Program by Contractor require prior approval by the City's Public Information Office. Contractor may provide additional public relations services upon written request by Customer. These services may include advertising, media relations, and public relations consultants. The fee for such services shall be mutually agreed upon based on the scope of the public relations services to be provided.
- e) Provide an automated web-based Citation processing program ("Axisis™ VPS") including image processing, color printing, and mailing of Citations per chargeable event. Axisis™ VPS shall comply with all applicable laws, including, but not limited to: (i) Arizona Revised Statutes Title 28; (ii) Arizona Rules of Civil Procedure Rule 4.1; and (iii) Arizona Rules of Procedure in Civil Traffic and Civil Boating Violation Cases. All Citations shall be delivered by First Class mail to the registered owner or violator within the statutory period. Any subsequent service of a Citation will be accomplished by a process server; service requiring the use of a process server must first be approved by the City.
- f) Service of Process. Contractor will work with the City's selected process service vendor to provide a file transfer system related to the affidavit of service.
- g) Contractor shall transmit data and PDFs of Citations as electronic files to the Mesa Municipal Court's Record Management System with periodic updates of all Citation notices and complaint data issued. Contractor will update the status of all Citations based on disposition information provided by the City. The Parties anticipate that Mesa Municipal Court will convert to the Administrative Office of the Courts statewide case management system ("AJACS") during the term of this Agreement. Contractor will utilize the process designated for AJACS to fulfill Contractor' requirements under the Agreement. Contractor will not make changes to the Citation Forms provided by the City without the approval of the Mesa Municipal Court, City of Mesa Information Technology Services ("City ITS"), and the Mesa Police Department.
- h) Information Technology Requirements
 1. Contractor shall provide automated upload of all Citation information to the Mesa Municipal Court database in a format compatible with City ITS and Mesa Municipal Court software.
 2. Contractor shall pay all costs associated with programming requirements to accommodate the uploading of information to populate the Mesa Municipal Court database and any modifications to the Mesa Municipal Court database system including, but not limited to, modifications necessary to accommodate the update to AJACS. Any and all software developed by Contractor must be compatible with Mesa Municipal Court software and AJACS. Contractor shall be responsible for any and all costs and programming associated with transitioning to future platforms or requested changes to file and data transmissions.

3. Contractor shall create a file transfer protocol ("FTP") to provide the Mesa Municipal Court with up to date information on each Citation. Contractor shall be required to provide a daily data electronic file containing all new Citations to be filed. The file will be transmitted to the Mesa Municipal Court's FTP site between 12:00 a.m. (midnight) and 7:00 am the following day. For example, the daily data file for a Monday will be transmitted the following Tuesday morning between 12:00 a.m. (midnight) and 7:00 a.m. In addition, an alternate means of transmitting this data must be available should the FTP site not be available; an alternate means of transmission of data will be agreed upon by the Parties. Although the Mesa Municipal Court's currently required method of communication with Contractor is via FTP, the Mesa Municipal Court will be migrating to the IBM MQ environment as a communication messaging vehicle used to channel the integration interface data between Contractor and AJACS.
4. Contractor shall provide the Mesa Municipal Court an electronic image in a PDF format of all Citation templates used. Each image should be accompanied by an XML file containing the metadata for the image. Contractor will make the files available for the City to pick up from the Contractor FTP site such that the City can feed the files into FileNet.
5. Contractor will accept on a regular basis an electronic file from the Mesa Municipal Court that contains all identified changes and adjudications that occurred related to pertinent data for a Citation; delivery of the file to Contractor will be based upon Mesa Municipal Court's normal hours of operation, excluding holidays. Contractor will be responsible to determine whether its internal case management system requires updating.
6. If digital imaging is used, and the image is included with the Citation, Contractor must be able to provide a duplicate copy of the image upon request of the Mesa Municipal Court or a citizen.
7. Returned mail will be processed by Contractor. The notes field of the Citation will be completed by Contractor and the Citation will be resent by Contractor at no cost to the City.
8. A website accessible to Citation recipients, by means of a notice number and PIN (Personal Identification Number), which will allow violation image viewing.
9. In-state vehicle registration information necessary to issue Citations resulting from the Axis™ System.
10. Contractor will provide out-of-state vehicle registration for as many out-of-state Motor Vehicle Departments as are available.
11. The ability for the City to create and print evidence packages at the Mesa Police Department, which will typically include a set of images with related documentation for each Citation issued.
 - i) Contractor will provide training to City employees as necessary.
 - j) Expert witnesses will be provided by Contractor as reasonably necessary to establish the accuracy, calibration, maintenance, repair records, technical operations, and effectiveness of the Axis™ System for contested Citations. After presentation of such testimony, the City may request additional testimony from a Contractor expert witness for challenges beyond standard violation complaint appearances. Testimony by all Contractor witnesses will be provided at no additional cost to the City.
 - k) Contractor will make available to the City a monthly report of Axis™ System results within fifteen (15) business days of the end of each calendar month.
 - l) Reports and documents related to this Agreement as mutually agreed upon between Contractor and the City.
 - m) Routine maintenance and cleaning of all Camera Systems.

- n) Following a request by the City for the relocation of any Camera System and mutual agreement of the parties, Contractor agrees to commence any agreed upon relocation of a Camera System within fourteen (14) days after all required permits have been approved (the date all permits are approved shall hereinafter be referred to as the "Approval Date"). The Approval Date shall be marked by the issuance of a signed writing from Contractor to the City, stating that all permits have been approved. Contractor approval for relocation of a Camera System shall not be unreasonably delayed, withheld, or denied. Contractor will relocate a Camera System at no cost to the City. The Parties agree that they will each perform due diligence in the selection of a location for the relocation of a Camera System in order to ensure that the placement of a Camera System will not interfere with or result in the Camera System having to be moved due to the City of Mesa Capital Improvement Plan or any other project plan; should a Camera System have to be moved following relocation due to a project plan, the Parties will equally share in the cost of moving the Camera System.
- o) Contractor will have all agreed-upon relocation work completed and have the Camera System fully operational no later than one hundred eighty (180) days from the Approval Date unless there are unforeseen circumstances beyond Contractor' reasonable control, except as otherwise provided in the Agreement.
- p) Contractor shall provide all power and required infrastructure to support the Camera Systems. Contractor shall provide proof of request for a metered service from the appropriate power service company within fifteen (15) calendar days of the relocation of a Camera System. If there is a delay in metered service of more than forty-five (45) calendar days after the request, the City shall allow Contractor to utilize existing traffic signal power source if metered and sufficient capacity exists. Should Contractor require temporary power they shall provide the temporary power source and obtain all necessary permits.
- q) Contractor will maintain a minimum of ten (10) lanes for Speed on Green per month. Failure to meet the minimum ten (10) lanes will result in a prorated discount of the Speed on Green fees. The time schedule for relocating Photo Safety Equipment may be extended by reason of delay, changes, additions, deletions, or other reasons if approved by the City in writing, or without written approval by the City if the delay is caused by an event of Force Majeure as that term is used in the Mesa Standard Terms and Conditions.
- r) Contractor shall be responsible for obtaining all required permits for installation, relocation, reinstallation, maintenance, and repair as required. The City will waive any permit fee issued to Contractor for work under this Agreement when the permit is issued by the City of Mesa.
- s) Contractor shall install and maintain prolongation markings as specified by the City.
- t) Contractor is responsible for the blue staking of underground elements when required for construction and repairs.
- u) The City uses NEMA TS1 & TS2 tap cabinets. Contractor shall meet or exceed present NEMA Traffic Control System Standards and City standards. Contractor shall use isolation relays or equivalent to protect traffic signal equipment from noise, transient voltage, and any related remote interconnect or interference problems in accordance with the NEMA standards.
- v) Contractor shall purchase and install State of Arizona required photo enforcement signage at all photo safety sites.
- w) Contractor shall work in conjunction with the City of Mesa Traffic Engineering Section in all matters related to City traffic signal connections.
- x) Contractor shall comply with the City of Mesa's Barricade Manual, a copy of which will be provided to Contractor on request, while work is being performed in the roadway by either Contractor or its subcontractors.

- y) All relocation, installation, reinstallation, and Camera System processes shall conform to local, state, and federal requirements and guidelines and be approved by the City of Mesa Traffic Engineering Section.
- z) Installation of loops must be in compliance with City of Mesa Traffic Signals Procedures.
- aa) Court testimony and paperwork necessary to prosecute Citations, including Driver Identification, will be provided by Contractor at no cost to the City.
- bb) Use of City Property. Notwithstanding anything contained in this Agreement to the contrary, the City reserves the right to use, occupy, and improve the City's right-of-way and public easements where the Stationary and Portable Camera Systems are located for any and all purposes allowed by the City for such right-of-way and public easements. Contractor understands and agrees that this Agreement is not intended to limit the City in utilizing the City's right-of-way and public easements for the normal, customary, and permitted uses therein.
- cc) Compliance with Laws.
 - 1. Contractor and its employees, agents, and contractors shall comply with all provisions of this Agreement, along with any and all applicable codes, ordinances, resolutions, standards, laws and policies including, but not limited to, all applicable legal requirements for Contractor' use of the City right-of-way and easements and Contractor installation, construction, maintenance, repair, and use of the Stationary and Portable Camera Systems. Additionally, Contractor shall not perform any work without complying with A.R.S. §§ 40-360.21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32.
 - 2. This Agreement does not modify, change, or alter the City of Mesa Code requirements, ordinances, or regulations; accordingly, separate from this Agreement, Contractor shall obtain all applicable permits and approvals as required by the City of Mesa for the construction, relocation, reinstallation, or installation of the Stationary and Portable Camera Systems.
 - 3. Contractor shall comply with Arizona Revised Statutes § 40-360.21 et seq. by participating as a member of the Arizona Blue Stake Center (or other appropriate organization selected by the City) with the necessary records and persons to provide the location and identity of Contractor' underground facilities upon receipt of a locate call, or as promptly thereafter as possible, but in no event later than two (2) calendar days after receipt of a locate call. A copy of Contractor' agreement or proof of membership shall be filed with the City. (Blue Stake Center Hotline 602-263-1100)
- dd) Conduct of Activities. Contractor shall use the right-of-way and public easements in accordance with applicable law/regulation and conduct its activities in a manner that will in no way interfere with the use or operation of the City right-of-way and easements. Contractor shall ensure that all right-of-way and public easements damaged or modified by Contractor following work by Contractor are returned to standards set forth in applicable law, including the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City supplements to MAG, and the City's engineering design manual.

Removal at Request of City Engineer. Contractor agrees to remove the Stationary or Portable Camera Systems if the City Engineer determines, in her/his sole discretion, that the Stationary or Portable Camera Systems need to be removed due to conflicts with current or future City improvements, City projects, or other public needs. Contractor will remove the Stationary or Portable Camera Systems within ninety (90) calendar days of request by the City. If the Camera System is to be reinstalled at the same location at a later date, Contractor shall reinstall the Stationary or Portable Camera Systems and have the Camera Systems be fully operational as required by the City within ninety (90) calendar days of permit approval. The timeframes of this Section supersede any contrary timeframes set forth in the Agreement including, but not limited to, the timeframes set forth in

Sections (n) and (o) of Contractor' Scope of Work. If Contractor fails to remove the Stationary or Portable Camera Systems as required by this Section, Contractor shall reimburse City for actual, direct and indirect damages incurred by the City as a result of such delays. Contractor will remove and reinstall the equipment for a reasonable fee, mutually agreed upon by the Parties to be paid by the City.

ee) Liabilities and Damages. In addition to any other indemnification or liability provisions set forth in the Agreement, Contractor shall be solely responsible and liable for, and shall hold harmless, defend, and indemnify the City, its officers, agents and employees, from, any and all damages, injuries, and losses arising from, or related to, any act or omission by Contractor in the design, construction, installation, location, use, relocation, or maintenance of the Stationary and Portable Camera Systems.

ff) Construction

1. Prior to construction, relocation, reinstallation, or installation of a Stationary or Portable Camera System, Contractor shall obtain all applicable permits (including, but not limited to, construction and right-of-way permits). Once construction has begun, Contractor shall diligently work to complete construction.
2. Contractor will install and maintain facilities in compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG"), the City supplements to MAG, and the City's engineering design manual.
3. Contractor shall maintain as-built drawings of any Contractor-installed and relocated infrastructure relating to Stationary Camera Systems located within the City of Mesa right of way and public easements. Contractor shall furnish the City copies of the as-built drawings in both hard copy and electronic formats. The electronic copy shall be provided in Autocad 2004 DWG format or the current City electronic format. If the locations are not provided as requested by the City, Contractor shall reimburse the City for actual costs associated with locating and potholing their facilities, and any delay to City projects as a result.

gg) Maintenance of Stationary and Portable Camera Systems

1. At Contractor' sole cost and expense, Contractor shall maintain the Stationary and Portable Camera Systems in a properly working, sound, clean, safe and attractive manner.
2. Contractor, at its sole cost and expense, shall repair all damage caused, in whole or part, by Contractor or its employees, agents, or contractors to the right-of-way and public easements in the construction, installation, use, maintenance, relocation, or repair of the Stationary and Portable Camera Systems. If Contractor fails to make such repairs, the City may, but has no obligation to, repair the damage and invoice Contractor for the expenses incurred to repair the damage, whether repaired by the City or an independent contractor at the City's direction.
3. Contractor shall complete all repairs not later than ten (10) calendar days after the damage occurred or at such later date as agreed to in writing by the City except, if any damage involves or may involve a health or safety issue or interferes with the ability of a utility provider to provide a utility service, Contractor shall immediately begin repairing such damage, shall continuously work to repair such damage until it is repaired, and shall use best efforts to expedite the completion of the repairs. The ten day requirement in this provision shall not apply if the extent of the damage is such that repairs, including permitting and construction, cannot reasonably be completed within this timeframe.
4. If Contractor fails to maintain or repair the Stationary and Portable Camera Systems, right-of-way, and public easement areas as required by this Agreement, the City may maintain or repair such, and Contractor shall reimburse the City for all costs incurred by the City for the maintenance or

repair, including administrative fees and legal fees incurred to collect the reimbursement. Contractor shall reimburse the City within thirty (30) days of invoice from the City.

hh) The City has no maintenance or repair obligations for the Stationary and Portable Camera Systems except as otherwise set forth under this Agreement.

ii) Prosecutable Image Rate Performance Guarantee

1. Minimum Performance Level. Contractor' designated minimum performance level percentage shall be 75% of violations net of the exceptions listed below. The per camera performance measure shall become effective thirty (30) days after execution of the Agreement.
2. Formula for Minimum Performance Level Below Guaranteed Prosecutable Image Rate. The calculation formula of Prosecutable Image Rate (shown below) shall be all events captured, less events not considered violations, events outside Contractor' control, and the City (including Mesa Police Department) exceptions of valid events. The resulting number shall form the denominator (Adjusted Total Events). From the denominator shall be counted and subtracted the "Contractor Controllable Exceptions", the remainder of which shall be Issued Citations (the Numerator). The Numerator divided by the Denominator shall produce the Performance Percentage.

Example Performance Percentage Calculation

Total Events	100
Less Deductible Exceptions	
Uncontrollable Exceptions	15
Police/City Waivers	5
Adjusted Total Events (Denominator)	80
Less	
Contractor Controllable Exceptions	20
Issued Citations (Numerator)	60
 Performance Percentage	 75%

3. Exception List. The following system exceptions shall be deducted from the count of total events per camera to form the Adjusted Total Events:

- Illegal right turn on red not enforced by the City
- No license plate or plate obstructed by the vehicle, another vehicle, a ball hitch, or other uncontrollable obstruction
- No ownership record available or returned (either in or out-of-state)
- No driver record available or returned (either in or out-of-state)
- Temporary / dealer plate (paper plate)
- Marred, faded or bent and unreadable plate
- No address or undeliverable address information returned from MVD
- Bad or severe weather affecting visibility
- Commercial, business, rented or leased vehicles for which only a traffic violation notice is issued by Contractor
- EMT, Police, Fire, unmarked or other government vehicle not enforced

- Driver face obstruction by object such as door frame, mirror, vehicle or other blockage such as intense sun glare
 - Vehicle waived through red light by police or flag man
 - Vehicle stopped after detection and did not complete violation
 - Funeral procession
 - Events where the MVD record name gender does not appear to match the driver gender
 - No driver license number found or driver license image unavailable or mismatch (possible future requirement)
 - Yielding to emergency vehicle
 - Faulty signal equipment
 - Signal showing simultaneous yellow and red signal
 - Second photo on green/vehicle clearing an intersection
 - Absence of video clip on straight through violation
 - Non-car (bicycle, etc.)
 - Violation line not visible or faded
 - Vehicle changing lanes from lanes on red signal to lanes on green signal
 - Any new requirement emanating from policy or legislative action after the start date of the Agreement.
 - Two vehicles traveling inside the radar beam at one time (for speed cameras)
4. Liquidated Damage Assessment. Except as otherwise provided above, Contractor agrees that if Contractor fails to achieve a system-wide Prosecutable Image Rate of seventy five percent (75%), Contractor shall deduct the pro-rated share of its Fees (*Exhibit C* to the Agreement) to make up the difference between the actual rate and the 75% guaranteed Prosecutable Image Rate on a per camera basis.

Example Prosecutable Image Rate Guarantee Calculation

Prosecutable Image Rate – Minimum	75%
Prosecutable Image Rate – Actual on Camera	65%
Performance Difference on Camera	10%
Stationary Camera System Approach Fee	\$4,100.00
Performance Difference on Camera	10%

Pro-Rated Approach Fee Credit to City on Camera \$ 410.00

If the overall or system-wide rate of 75% is achieved, but a specific camera performs below the 75% rate, the Liquidated Damage set forth in this Section shall not be imposed.

This will be enforced on a retrospective basis from the fourth month of the Agreement start date by using a rolling 3-month average. For example, if Contractor attains 76% in one month, then 74% in the next month, and then 75% in a third month, no liquidated damages shall be assessed. The system wide average will be calculated on the 15th of the following month. Any credit will be due on the following month's invoice. This clause does not apply to Portable Camera Systems or those provided solely on a fee per Citation basis (mid-block speed cameras).

- jj) Any installation in the public right-of-way requires that the plans shall be sealed by an engineer registered in the State of Arizona.
- kk) Contractor employees, representatives, and agents must be clearly identifiable as a Contractor employee when in the Mesa Municipal Court Building.

Exhibit B
City of Mesa Scope of Work

The City Shall:

- a) Review each potential Violation to determine which will be issued as Citations. The Axis™ System will apply an electronic signature to each approved Citation.
- b) Provide a judge or hearing officer and court facilities to schedule and hear disputed Citations.
- c) Provide customary fine collection services for all final dispositions. Additionally, the City agrees to pursue registration suspensions or utilize other legal and customary means necessary to compel payment of outstanding Citations.
- d) The City will transmit an electronic file to Contractor with regular updates of all Citation disposition information provided by the City.
- e) The City will provide a project manager (hereinafter the City's "Project Manager") with authority to execute the City's responsibilities under the Agreement unless otherwise noted.
- f) Because time is of the essence, the City shall direct its departments to cooperate with Contractor with respect to required systems integration and program implementation.
- g) The City agrees to use due diligence in working with Contractor to acquire in a timely manner the necessary permits (e.g., but not limited to, an encroachment permit), approvals and other necessary documentation, from the City (and the State of Arizona, if necessary) to enable the Axis™ System relocation after the submission of the plans. City shall be responsible for paying or shall waive all traffic control fees.
- h) The City shall provide access to traffic signal phase connections to a pull box nearest to each Stationary Camera System.
- i) In those instances where damage to a Camera System or sensor is caused by a third party or by the City or authorized agent Contractor will provide an estimate of the cost of repair. Upon authorization from the City's Project Manager to proceed with the repairs or replacement, Contractor shall replace or repair any damaged equipment and submit an invoice to the City for pre-approved repair cost.
- j) The City shall provide a letter for the Violation Processing subcontractor to the Department of Motor Vehicles indicating that Contractor is acting as an agent of the City of Mesa for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. § 2721, Section (b)(1) and as may otherwise be provided or required by any provision of applicable state law. Contractor will assist in the design and implementation of enhanced photo radar batch in accordance with current requirements of ADOT and the Motor Vehicle Division. If the City requests changes not required by ADOT, the City shall be responsible for Contractor' programming costs necessary to meet such new requirements.
- k) City shall provide walk-up customer service for citizens at the police department.
- l) The City is responsible for providing service of process of Citations and other documents related to the Program in accordance with applicable law.

Exhibit C

Service Fees Per Approach

The City agrees to pay Contractor the Fee(s) as itemized below:

For Existing Sites:	Current Fee
City Owned Cameras - per successfully adjudicated*	\$ 25.00
Contractor Owned Cameras - per successfully adjudicated*	\$ 40.00
Flat Monthly Fee Option:	
City Owned Cameras - 1 Lane	\$ 2,000.00
City Owned Cameras - 2 Lanes	\$ 2,000.00
City Owned Cameras - 3 Lanes	\$ 2,000.00
City Owned Cameras – 4 Lanes	\$ 2,000.00
SOG - flat fee includes up to 10 lanes	\$ 4,500.00

	Fee Per Successfully Adjudicated*
For New or Upgraded Sites:	
Contractor Owned Fixed Red Light Camera (including SOG, if mutually agreed upon) – Parties must mutually agree on the number of units.	\$ 45.00
Contractor Owned Fixed Speed Camera - Parties must mutually agree on the number of units.	\$ 45.00
Contractor Owned Transportable Speed Camera - Parties must mutually agree on the number of units.	\$ 45.00

*Per Successfully Adjudicated means a violation that the violator either pleads liable for or is otherwise found responsible for or successfully completes defensive driving school.

Invoice Credit:	Total Credit
Total annual administrative credit prorated equally on each monthly invoice**	\$60,000
One-time credit for two ALPR Trailers prorated equally over twelve consecutive months of monthly invoices***	\$60,000
One-time credit for two handheld units prorated equally over twelve consecutive months of monthly invoices***	\$10,000

**Monthly credit of \$5,000 will begin upon the first monthly invoice submitted by Contractor to the City subsequent to the Effective Date of this Agreement.

*** The one-time monthly credit(s) of \$5,000 will begin upon the first monthly invoice following the provision of a purchase order of the two ALPR trailers and/or handheld units by the City to Contractor.

If the City wishes to procure the ALPR trailers and/or handheld units directly from Contractor, the Parties recognize a written Addendum to this Agreement will be necessary to ensure the responsibilities of each Party are fully-understood and documented.

Exhibit D
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, other than in the limited capacity as agent of the City as expressly written in subsection j) of Exhibit B of this Agreement. 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 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.
- 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 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.
- S.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.
- 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 will 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 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.
- 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 must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance prior to the beginning of the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

- b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.
- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City or its agents to inspect applicable personnel records to verify such compliance. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty will constitute 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.
 - (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor understands and acknowledges that it is the policy of the City of Mesa to promote non-discrimination. As such, Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans status, marital status, or genetic information, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. In performance under this Agreement, Contractor and Contractor 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, the Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods of services to the City.
- 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, 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 Israel.

S.10 SALES/USE TAX, OTHER TAXES.

- a. Contractor is 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. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.
- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.

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.

12.1. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.

12.2. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.

S.13 AUDITS AND RECORDS. Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.

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 for any reasonable cause not prohibited by law.

- S.15 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
- S.16 **DEFAULT.**
- a. A party will be in default if that party:
 - (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - (ii) Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - (iii) Conducts business in an unethical or illegal manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - (iv) Fails to carry out any material term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
- S.17 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining

reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.

- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
- 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) calendar 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 will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
- S.22 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared invoice.
- S.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.
- S.24 **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.

- c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third-party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
- S.25 **WARRANTY.** Contractor warrants that all services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, the 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.
- S.26 **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- 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 will not bind the City 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 will 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 will 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 **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
- S.31 **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
- 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 will 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 will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
- S.36 **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
- S.37 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.
- 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 (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 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.

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

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a

valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

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

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

- 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 must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
- S.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.
- S.42 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties, and 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 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.
- 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, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
- S.46 **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural)

person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable