

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PFM ASSET MANAGEMENT LLC**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of February 18, 2016, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and PFM Asset Management LLC, a Delaware limited liability company (the "Contractor").

RECITALS

A. After a competitive procurement process, the City of Mesa ("Mesa") entered into Contract No. 2015006, dated August 1, 2015, as amended by that certain Contract Amendment No. 1, dated November 1, 2015 (collectively, the "Mesa Contract"), for the Contractor to provide investment management services. A copy of the Mesa Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

B. The Town is permitted, pursuant to Section 3-3-27 of the Town Code, to purchase investment management services under the Mesa Contract, at its discretion and with the agreement of the awarded Contractor, and the Mesa Contract permits its cooperative use by other public entities, including the Town.

C. The Town and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Mesa Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the Town with investment management services, as more particularly set forth in Section 2 below (the "Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until July 31, 2016 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Mesa Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Mesa Contract has not expired or has been extended, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the Town approves the additional one-year

term in writing (including any price adjustments approved as part of the Mesa Contract), as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Town may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide the Services under the terms and conditions of the Mesa Contract with the investment policies provided by the Town.

3. Compensation. For the Initial Term, the Town shall pay Contractor an aggregate amount not to exceed \$6,000.00 for the Services at the unit rates as set forth in the Mesa Contract. Thereafter, for each subsequent Renewal Term, if any, the Town shall pay the Contractor an annual aggregate amount not to exceed \$15,600.00 for the Services at the unit rates set forth in the Mesa Contract. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed \$67,200.00.

4. Payments. The Town shall pay the Contractor monthly for Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Mesa Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Mesa Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the Town to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Section. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to

comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

6. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

7. Conflict of Interest. This Agreement may be canceled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

8. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and a suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

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

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

Agreement or under the Mesa Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

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

12. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 11 above, the Town shall be afforded all of the insurance coverage and indemnifications afforded to Mesa to the extent provided under the Mesa Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the Town under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

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

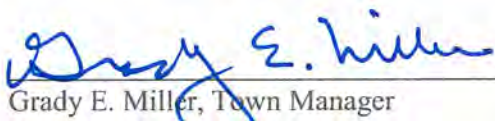
If to the Town:	Town of Fountain Hills 16705 East Avenue of the Fountains Fountain Hills, Arizona 85268 Attn: Grady E. Miller, Town Manager
With copy to:	GUST ROSENFELD P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire, Esq.
If to Contractor:	PFM Asset Management LLC 1820 East Ray Road Chandler, Arizona 85225 Attn: Paulina Woo

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


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

"Town"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation


Grady E. Miller, Town Manager

ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On February 25th, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.



(Affix notary seal here)


Notary Public

"Contractor"

PFM ASSET MANAGEMENT LLC,
a Delaware limited liability company

By: 

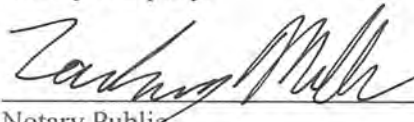
Name: Lauren L. Brant

Title: Managing Director

(ACKNOWLEDGMENT)

STATE OF Oregon)
COUNTY OF Deschutes) ss.

On February 22nd, 2016, before me personally appeared Lauren L. Brant, the Managing Director of PFM ASSET MANAGEMENT LLC, a Delaware limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who ~~he~~/she claims to be, and acknowledged that ~~he~~/she signed the above document on behalf of the limited liability company.


Notary Public

(Affix notary seal here)

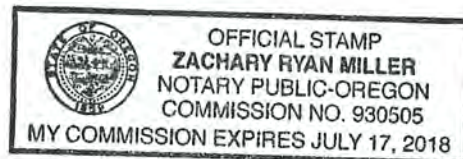


EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PFM ASSET MANAGEMENT LLC

[Mesa Contract]

See following pages.

Contract Number: 2015006

Contract Title: Investment Management Services

Amendment Number: 1

Description of Change: Please note the following revisions. PFM Asset Management, LLC, does not accept purchasing cards as payment.

Section 3.4 Availability of Funds. Add: The City will give Contractor prompt notification of any event of non-appropriation.

Section 6.6 Insurance. Contractor's professional liability insurance policy does not contain a waiver of subrogation provision. The City agrees to waive this requirement.

Section 6.8 c Insurance. Contractor does not have any company owned autos, therefore this does not apply.

S1. Independent Contractor. Revise as follows: It is expressly understood that the relationship of Contractor to the City is 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 **(except with respect to the purchase and sale of portfolio securities)**, 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.

S24. Indemnification/Liability, paragraph (a). Revise as follows: 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 witness' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the **wrongful performance, whether negligent or intentional, of 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.

Current contract amount: \$201,000

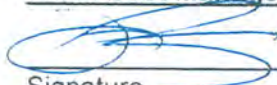
Change Amount: ☐ Increase ☐ Decrease ☒ No Change.....

New contract amount: \$201,000

Effective Date of Change: November 1, 2015

Acceptance: On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and that except as amended herein, all provisions of the Contract remain in full force and effect.

PFM Asset Management LLC:

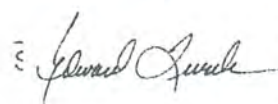

Signature

Laven Brant
Printed Name

(602) 377-9750
Phone Number

11/1/15
Date

City of Mesa:



City Manager Designee

Digitally signed by Edward Quedens
DN: cn=Edward Quedens, o=City of
Mesa, Arizona, ou=Business Services
Department,
email=ed.quedens@mesaaz.gov, c=US
Date: 2015.10.27 14:00:27 -0700

Date

CONTRACT AMENDMENT – ATTACHMENT 1

Exhibit A - Scope of Work. Add:

Investment Advisor Provisions.

(a) Services of Consultant. The City hereby engages Consultant (also referred to in this Agreement as "Contractor") to serve as investment advisor under the terms of this Agreement with respect to the funds described in this Agreement and such other funds as the City may from time to time assign by written notice to Consultant (collectively the "Managed Funds"), and Consultant accepts such appointment. In connection therewith, Consultant will provide investment research and supervision of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. Consultant shall continuously monitor investment opportunities and evaluate investments of the Managed Funds. Consultant shall furnish the City with statistical information and reports with respect to investments of the Managed Funds. Consultant shall place all orders for the purchase, sale, loan or exchange of portfolio securities for the City's account with brokers or dealers recommended by Consultant and/or the City, and to that end Consultant is authorized as agent of the City to give instructions to the custodian designated by the City (the "Custodian") as to deliveries of securities and payments of cash for the account of the City. In connection with the selection of such brokers and dealers and the placing of such orders, Consultant is directed to seek for the City the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to Consultant by such brokers and dealers. The Custodian shall have custody of cash, assets and securities of the City. Consultant shall not take possession of or act as custodian for the cash, securities or other assets of the City and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and the applicable covenants and as supplemented by such other written instructions as may from time to time be provided by the City to Consultant. Consultant shall be entitled to rely upon the City's written advice with respect to anticipated drawdowns of Managed Funds. Consultant will observe the instructions of the City with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which Consultant reasonably believes to be reputable, qualified and financially sound.

(b) Pool Compensation. Assets invested by Consultant under the terms of this Agreement may from time to time be invested in (i) a money market mutual fund managed by Consultant or (ii) a local government investment pool managed by Consultant (either, a "Pool") or in individual securities. Average daily net assets subject to the fees described in this Agreement shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for Consultant and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(c) Other Compensation. If and to the extent that the City shall request Consultant to render services other than those to be rendered by Consultant under this Agreement, such additional services shall be compensated separately on terms to be agreed upon between Consultant and the City.

(d) Expenses. Consultant shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the Managed Funds. Except as expressly provided otherwise herein, the City shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the City's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, and fees and expenses of the Custodian.

(e) Registered Advisor; Duty of Care. Consultant hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. Consultant shall immediately notify the City if at any time during the term of this Agreement it is not so registered or if its registration is suspended. Consultant agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the City may have under any federal securities laws. The City hereby authorizes Consultant to sign I.R.S. Form W-9 on behalf of the City and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

(f) Consultants' Other Clients. The City understands that Consultant performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The City agrees that Consultant, in the exercise of its professional judgment, may give advice or take action with respect to any of its other

CONTRACT AMENDMENT – ATTACHMENT 1

clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. Consultant shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that Consultant, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

(g) Disciplinary Actions. Consultant shall promptly give notice to the City if Consultant shall have been found to have violated any state or federal securities law or regulation in any final and un-appealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, FINRA, or any regulatory authority of any State based upon the performance of services as an investment advisor.

(h) Books. Consultant shall maintain records of all transactions in the Managed Funds. Consultant shall provide the City with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by Consultant and the City.

(i) Brochure and Brochure Supplement. Consultant warrants that it has delivered to the City prior to the execution of this Agreement Consultant's current Securities and Exchange Commission Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). The City acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.



mesa·az

AGREEMENT PURSUANT TO SOLICITATION

City OF MESA CONTRACT NO. 2015006

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
Email:	Sharon.Brause@MesaAZ.gov

AND

Company Name:	PFM ASSET MANAGEMENT LLC
USPS Address:	1820 E. Ray Road Chandler, AZ 85225
Delivery Address:	1820 E. Ray Road Chandler, AZ 85225
Attention:	Lauren Brant, Managing Director
Telephone:	(855) 885-9621
Facsimile:	(855) 885-9622
Email:	BrantL@pfm.com

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement ("Agreement") pursuant to a solicitation is made and entered into this ____ day of July, 2015, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and PFM Asset Management, a(n) LLC ("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 2015006** ("Solicitation") on **May 18, 2015** for **INVESTMENT MANAGEMENT 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 **August 1, 2015** and ending on **July 31, 2018**. 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 extension period of **two (2) one (1) year terms**. 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 renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a Contractor 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 City will pay Contractor the sum(s) described in **Exhibit B ("Pricing / Fees")** in consideration of Contractor's performance of the Scope of Work during the Term. Contractor acknowledges the City may, at its option and where available: (i) use a MasterCard Procurement Card to place and make payment for orders under the Agreement; and (ii) use the Internet to communicate with Contractor and to place orders as permitted under this Agreement.

3.2 **Invoices.** Payment will be made to Contractor in the manner described in **Exhibit B** following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice must contain, at a minimum, all of the following:

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

3.3 **Payment of Funds.** Payment will be made to Contractor by either: (i) Purchase Order when Contract Amount will be paid to Contractor as a one-time payment; (ii) Direct Order off of a Master Agreement when multiple payments totaling the Contract Amount will be made to Contractor; (iii) a MasterCard Procurement Card; or (iv) as otherwise stated in **Exhibit B**.

3.4 **Availability of Funds.**

- a. The City's payment of any funds to Contractor under the Agreement is contingent upon the availability of funds by the City for disbursement as described in the Mesa Standard Terms and Conditions S.21 that is attached to the Agreement as **Exhibit C**. The City is the sole judge and authority as to the availability of funds under the Agreement.
- b. If any action is taken by any state or federal agency, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations that in any way affect the Agreement, the City may amend, suspend, decrease, or terminate its obligations under the Agreement. The City will provide written notice of the effective date of any suspension, amendment, or termination based upon the availability of funds at least ten (10) days in advance; any payment to Contractor based on such suspension or termination will be paid in accordance with the Mesa Standard Terms and Conditions S.22 that is attached to the Agreement as **Exhibit C**.

3.5 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction

which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

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. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - c. Automobile liability, bodily injury and property damage with a combined single limit of \$1 million including owned, hired and non-owned autos.
 - d. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence Professional Liability insurance and/or Errors and Omissions.
 - e. The Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statute.
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.

PFM ASSET MANAGEMENT, LLC.

Signature: 

Title: Managing Director

Printed Name: Lauren L. Brant

City of Mesa, an Arizona municipal corporation

Signature: 

Title: BUSINESS SERVICES DIRECTOR

Printed Name: Edward Quezada

Exhibit List

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

EXHIBIT A SCOPE OF WORK

1. **PROJECT MISSION.** The City of Mesa is dedicated to providing superior services to its customers in order to improve the quality of life for Mesa residents, businesses and visitors. The City is looking for Contractors who share that dedication and will help the City meet that goal.
2. **BACKGROUND.** The size of the City's investment portfolio is approximately \$336 million. A copy of the current investment policy is Appendix A attached.

The City expects its Investment Firm to be highly experienced, a leader and innovator in the management of investments, and be able to provide comprehensive investment advisory and portfolio accounting services.

3. **SCOPE OF WORK.** Specific responsibilities of the Investment Firm shall include, but not be limited to the following:

- a) The Firm, and its affiliates, are restricted from selling to City, or buying from the City, any securities to or from that Firm's own inventory or account. The Investment Advisor shall act solely in a fiduciary capacity and shall not receive any fee or compensation based upon the purchase or sale of securities but, rather, the Investment Advisor will be compensated pursuant to the provision of its contract with the City.
- b) Manage, on a daily basis, the City's separate investment portfolios pursuant to the specific, stated investment objectives. Place all orders for the purchase and sale of securities, communicate settlement information to City's staff and coordinate security settlement.
- c) Serve as a general resource to the City's staff for information, advice and training regarding investments.
- d) Work with City staff to understand cash flow projections to ensure that the investment strategy is consistent with City's liquidity requirements.
- e) Provide monthly statements with all the information required by Governmental Accounting Standards Board (GASB). These reports must include a mark-to-market valuation. The selected investment manager must maintain accurate reports of investments including the diversity of investments and compliance with applicable investment policies of City and Arizona Revised Statutes.
- f) Provide monthly and quarterly investment reports including a description of market conditions, investment strategies employed performance and suggested changes to investment strategy. The performance numbers shall be presented as required by the CFA Institute's "GIPS."
- g) The Investment Advisor WILL NOT provide custodial services or security safekeeping.

4. **MINIMUM QUALIFICATIONS.** To be considered by the City, Investment Firm must:
 - a) Currently manage at least \$10 billion of domestic fixed income assets for public entities. Assets for which periodic (daily, monthly or quarterly) advice is provided should be excluded from the calculation of funds under management. As of March 31, 2015, PFM Asset Management LLC ("PFMAM") had \$90.1 billion in total fixed-income assets, including \$51.6 billion in discretionary assets under management and \$38.5 billion in non-discretionary assets under advisement.¹

¹Includes assets for non-public entities; however, the vast majority are public entities.

EXHIBIT A
SCOPE OF WORK

- b) Manage a minimum of twenty (20) portfolios comprising local agency assets. As of March 31, 2015, PFMAM managed 980 portfolios for local agencies, including 22 portfolios comprising local agency assets in Arizona alone.
- c) Firm must be familiar with all applicable statutes with regard to qualified investments for public entities. As of March 31, 2015, PFMAM managed 980 portfolios for local agencies, including 22 portfolios comprising local agency assets in Arizona alone.
- d) Be registered with the Securities and Exchange Commission under the Investment Advisor's Act of 1940. PFMAM is an SEC-registered investment advisor under the Investment Advisers Act of 1940 (the "Act").
- e) Be financially solvent and appropriately capitalized to be able to provide service for the duration of the contract. As demonstrated in the audited financial statements of our holding company, PFMAM is financially solvent and appropriately capitalized to provide investment advisory services to the City of Mesa (the "City"). The PFM Group of companies has been consistently profitable during its history, and we expect all components to be profitable again this year.
- f) Provide verification of Errors & Omissions insurance coverage of at least \$1 million. PFMAM's certificates of insurance are included.
- g) Adhere to the Code of Professional and Ethical Standards as described by the CFA Institute. We adhere to national industry standards of professional and ethical codes of conduct, maintaining an internal Code of Ethics (the "Code") in accordance with SEC Rule 204A-1 promulgated under the Act. Those employees who hold the Chartered Financial Analyst ("CFA") designation are subject to the Professional and Ethical Standards of the CFA Institute.

5. ASSETS UNDER MANAGEMENT. Firm must:

- a) Provide the total dollar amount and percentage managed (exclude accounts for which FIRM's service is providing periodic oversight or advice) for each of the following categories: public agency (excluding retirement funds), corporations, and other.

**EXHIBIT A
SCOPE OF WORK**

<i>Type of Client</i>	<i>Amount Managed (\$ Billions) as of 3/31/15</i>	<i>Percent by Market Value</i>
Public Agencies*	\$49,097,643,985	87%
Retirement Funds (Pension/Other Post-Employment Benefits ("OPEB"))	\$3,169,674,166	6%
Non-Profit Organizations	\$3,108,529,780	6%
Corporations**	\$397,706,547	0%
High Net-Worth Individuals	N/A	
Other***	\$452,647,420	1%
Total	\$56,226,201,898	100%

*Includes pooled assets.

** Includes healthcare and self-insurance entities.

***Includes union, insurance, and education-related entities.

- b) For portfolios whose durations exceed one (1) year, provide the percentage of assets under management for FIRM's latest reporting period using the table below.

Security Type	Amount (%)
U.S. Treasury Securities	43.6%
Federal Obligations	30.3%
Corporate	
▪ AAA-AA	8.9%
▪ A	6.9%
▪ BBB*	0.1%
Other**	10.2%

* Allocations are based on ratings by Standard & Poor's. The securities comprising the "Corporate BBB or lower" category carry a rating of A- or higher by either Moody's Investor Services or Fitch Ratings.

** Includes commercial paper, negotiable certificates of deposit ("NCD"), asset-backed securities ("ABS"), CD's, municipal obligations, agency mortgage-backed securities ("MBS"), and supranationals. As of March 31, 2015.

- c) Has FIRM ever purchased a security for a client that was downgraded below BBB- during the period it was held? If yes, please list the security(ies), its lowest rating while held by a client, and FIRM's recommendation to the client for addressing the downgrade. No.
- d) Has FIRM ever purchased a security for a client that defaulted while it was held in their portfolio? If yes, please list the security(ies) and how the Firm addressed the default. No.

EXHIBIT A SCOPE OF WORK

With more than \$51.6 billion in fixed-income assets under management and a strong long-term management track record, PFMAM is a leading provider of independent investment advisory services to public entities, like the City, and other similar institutional investors such as counties, special districts, and higher education entities.

Sector and State-Focused Assets Under Management Experience As of March 31, 2015

Cities Across the Country	Arizona Public Entities
\$9.7 billion in investment management services	\$2.1 billion in investment management services

PFMAM specializes in managing the short- and intermediate-term, fixed-income assets of public agencies. We have consistently achieved our clients' objectives, and we attribute our success to the following:

- Our focus on the short/intermediate market and on public funds management;
- Communication with clients;
- Understanding of our clients' investment programs, including cash flows and risk tolerances;
- Our ability to assess and act quickly to market innovations;
- The breadth of our market research and competitive shopping;
- Our proprietary, customized analytic tools;
- Ability to restructure a portfolio when market opportunities arise or client cash needs change; and
- Experience of our professionals.

City of Mesa Specific Experience

Inherent in our investment management approach is the belief that each investment program should be built to meet the unique challenges facing an individual entity. A hallmark of our relationship with the City over the last five years has been constant communication with staff to ensure that the City's strategy is tailored to meet both its very specific cash flow requirements and to maximize investment opportunities. The market environment since 2010 has been particularly challenging, and we have been proactive in evaluating longer-term opportunities while being mindful of potentially higher rates. Below are some of the ways we have worked closely with the City to add value to its investment program.

EXHIBIT A SCOPE OF WORK

- Performed extensive and ongoing cash flow analyses to identify "core" funds to extend the average maturity of the portfolio and seek to generate significantly higher returns on balances that are not needed for near-term liquidity.
- Consistent returns for the City through active portfolio management. Since 2010, the portfolio has generated approximately \$5,142,330² in earnings net-of-fees, while generating performance in-line with the established One- to Three-year Treasury Index total return benchmark.
- Developed a customized cash flow model, monthly Investment Committee report, and quarterly Council report.
- Worked with the City to update guidelines for the portfolio to mirror Arizona Revised Statutes.
- Facilitated the Request for Proposal ("RFP") process to rebid the City's banking relationship in 2014.

PFMAM has 196 professionals, as of March 31, 2015, who are dedicated to actively managing and supporting the management of \$56.2 billion in fixed-income operating funds, capital funds and reserves, and bond proceeds primarily for public agencies. The following table provides a breakdown of PFMAM's professionals by classification:

Group	Employees
Client Management	106
Trading/Portfolio Management/Investment Research	25
Compliance/Legal	7
Accounting	23
Communications/Research	8
Operations	22
Administration Staff	5
Total	196

PFMAM is an SEC-registered investment advisor under the Investment Advisers Act of 1940.

PFMAM does not act as a broker or primary securities dealer, nor do they receive any compensation for client transactions other than the direct management fee paid by clients. PFMAM does not accept soft dollar arrangements. PFMAM does have a subsidiary that is a limited-purpose broker/dealer. They do not trade for individual client accounts through this broker/dealer or receive any commissions through this subsidiary and the broker/dealer holds no securities in inventory. This subsidiary would have no role in their management of the City's portfolio.

They adhere to applicable national industry standards of professional and ethical codes of conduct, maintaining an internal Code in accordance with SEC Rule 204A-1 under the Act.

² Earnings represent accrual earnings net-of-fees billed to the City.

EXHIBIT A SCOPE OF WORK

Many of PFMAM's investment personnel currently hold or are pursuing the CFA designation. As such, they are subject to both the CFA Institute's Code of Professional and Ethical Standards as well as PFMAM's standards of ethical and professional conduct. PFMAM's formal internal Code embodies common principles of integrity, care, and professionalism and is applicable to all of our employees. Every employee is expected to maintain the highest ethical standards, to embody a business culture that supports actions based on what is right rather than on what is expedient, to deal fairly with customers and one another, to protect confidential information, and to seek guidance about ethical questions. More specifically, with respect to advisory activities, the Code requires that whenever our personnel act in a fiduciary capacity, we consistently put the client's interest ahead of the firm's. The Code requires that we disclose actual and potential meaningful conflicts of interest and will manage actual conflicts in accordance with applicable regulatory and legal standards. Their Compliance Group monitors and audits compliance with the requirements set forth in their Code of Ethics.

PFMAM will continue to offer services that meet and exceed all of the requirements listed in the City's Scope of Work. As a resource to the City on all investment-related matters, they will continue to provide investment policy guidance, proactive market analysis, active portfolio management, detailed reporting on investments and compliance, ongoing communications from senior strategists, and staff training. Key ways they have enhanced the City's portfolio include: 1) **safeguarding the City's assets** at all times, 2) **developing an investment strategy** to help the City optimize the investment of its liquid and core funds, 3) providing an **extensive cash flow analysis** on a monthly basis to optimize short- and long-term investments, 4) seeking to **enhance returns** for the City through active portfolio management, and 5) performing administrative and reporting functions for the portfolio to **free up staff time** to focus on other projects.

PFM will continue to work closely with the City to formulate and implement specific investment strategies to accommodate the City's diverse capital needs, such as the economic, community, and infrastructure initiatives outlined in the City's "This is My Mesa: Mesa 2040 General Plan" and provide liquidity to meet on-going obligations and debt service payments. Additionally, they will continue to manage the intricate and time-consuming trade execution process from competitively shopping broker inventories to arranging settlement of securities with the custody bank and generating the documentation for the City's recordkeeping so that City staff remains free to manage other responsibilities. There will be no lag time in implementing any changes to the investment strategy. PFM will continue to provide informational resources to the City's staff, hold monthly investment meetings, attend Council meetings as requested, and maintain frequent day-to-day communication.

PFMAM's investment advisory approach would continue to emphasize a close working relationship with the City, supported by PFMAM's breadth of resources, including experienced portfolio managers, dedicated fixed-income research analysts, and state-of-the-art trading and accounting systems. Outlined below is our approach to continue providing the City's Scope of Work.

**EXHIBIT B
PRICING / FEES**

In acknowledgement of the significant growth of the City's investment program from \$25 million to \$335 million over the last five years, PFMAM proposes the following fee schedule with additional breakpoints at the higher asset tiers.

- **9 basis points (0.09%)** per year on the first \$100 million of assets under management.
- **6 basis points (0.06%)** per year on assets between \$100 million and \$200 million under management.
- **4 basis points (0.04%)** per year on assets between \$200 million and \$300 million under management.
- **3 basis points (0.03%)** per year on assets that exceed \$300 million under management.

The program has advanced over the last five years both in size and complexity through the partnership between the City and PFMAM. PFMAM believes that the proposed fee schedule recognizes both the City's trust and commitment as well as the unique quantitative and qualitative resources that PFMAM brings to the relationship. PFMAM will consider any compensation structure that the City feel will provide fair value for both parties, including a performance-based fee.

PFMAM would bill the City monthly based on the average assets under management for the month.

This fee schedule covers all of normal costs, but does not include any additional services beyond our Scope of Work for this engagement (e.g., the procurement of structured investment products and arbitrage rebate compliance services). The fees listed above represent the only compensation PFMAM will receive for this engagement. PFMAM does not participate in any "soft-dollar" or third-party agreements that could compromise the objectivity of our advice.

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the proposal prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have 1.75% removed from the taxable item(s) for the purpose of award evaluation (i.25).

Payment terms (not less than net 30 days): 30 days

Prompt Payment Discount of 0 % if invoices are paid within 0 days of receipt.

Does Respondent agree to honor the prices, terms and conditions to other agencies as specified in section S.38?

☒ Yes ☐ No (A "no" answer will not disqualify your bid.)

Will you allow payment of invoices using a Procurement Card? ☐ Yes ☐ No

Discount for Procurement Card Purchases? %

Respondent complies with S.9 "Compliance With Applicable Law"? ☐ Yes ☐ No

ADDENDA

Proposers are responsible for verifying receipt of any addenda issued by checking the City's website at www.mesaaz.gov/purchasing prior to the bid opening (see i.2). Failure to acknowledge any addenda issued may result in a response being deemed non-responsive.

Acknowledgement of Receipt of Addenda (initial for each addenda received, if applicable):

Addenda #1

EXHIBIT C
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 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 throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel,

EXHIBIT C
STANDARD TERMS AND CONDITIONS

and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

S.10 SALES/USE TAX, OTHER TAXES.

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

- 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 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 not prohibited by law, 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 manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - (iv) Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of

EXHIBIT C
STANDARD TERMS AND CONDITIONS

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 final invoice.

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- 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 the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
- 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.

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- 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.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
- S.34 **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
- 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

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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 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 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 constitutes 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.

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- 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.