COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CORE & MAIN LP

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of May 21, 2018, between the City of Avondale, an Arizona municipal corporation (the "City"), and Core & Main LP, a Florida limited partnership (the "Vendor").

RECITALS

A. After a competitive procurement process, the City of Mesa, Arizona ("Mesa") entered into Contract No. 2016049, dated April 20, 2016, with HD Supply Waterworks, Ltd. ("HD") for HD to provide bronze water service valves, fittings and hydrants. On August 1, 2017, HD was fully divested from its parent company, which resulted in a name change and Contract Amendment Number 1 was issued to reflect the entity change (collectively, the "Mesa Contract"). 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 City is permitted, pursuant to Section 25-24 of the City Code, to purchase such materials under the Mesa Contract, at its discretion and with the agreement of the awarded Vendor, and so long as the Mesa Contract permits its cooperative use by other public entities, including the City.

C. The City and the Vendor 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 Vendor may provide the City with bronze water service valves, fittings and hydrants, as more particularly set forth in Section 2 below on an "as-required" basis (the "Materials") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials.

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 City and the Vendor hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until April 19, 2019 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Mesa Contract.

1.2 Renewal Terms. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a "Renewal Term") if (i) it is

deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Mesa Contract has not expired, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Vendor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Mesa Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Vendor'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 City may, at its discretion and with the agreement of the Vendor, 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.

1.3 Non-Default. By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Vendor shall be deemed to affirmatively assert that (i) the City is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term are forever waived.

2. Purchase of Materials. This is an indefinite quantity and indefinite delivery Agreement for Materials under the terms and conditions of the Mesa Contract. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the specific Materials to the City in such quantities and configurations as may be agreed upon between the parties, in the form of a written invoice, quote, materials order or other form of written agreement describing the Materials to be delivered (each, a "Materials Order"). Each Materials Order shall (i) contain a reference to this Agreement and the Mesa Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. A Materials Order submitted without referencing this Agreement and the Mesa Contract will be subject to rejection. Vendor acknowledges and agrees that a Materials Order containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement (collectively, the "Unauthorized Conditions"), other than City's project-specific requirements, is hereby expressly declared void and shall be of no force and effect. Acceptance by the City of any Materials Order or 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 or to exercise or delay the exercise of any right or remedy provided in this Agreement, the Mesa Contract shall not alter such terms and conditions or relieve the Vendor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement. If this Agreement is renewed pursuant to Subsection 1.2 above and such renewal includes any Unauthorized Conditions, other than price, those terms will be null and void.

2.1 Inspection; Acceptance. Materials are subject to final inspection and acceptance by the City. Materials failing to conform to the requirements of this Agreement and/or the Mesa Contract will be held at the Vendor's risk and may be returned to the Vendor. If

so returned, all costs are the responsibility of the Vendor. Upon discovery of non-conforming Materials, the City may elect to do any or either of the following by written notice to the Vendor: (i) waive the non-conformance or (ii) bring the Materials into compliance and withhold the cost of same from any payments due to the Vendor.

2.2 Cancellation. The City reserves the right to cancel any Materials Order within a reasonable period of time after issuance. Should a Materials Order be canceled, the City agrees to reimburse the Vendor, but only for actual and documentable costs incurred by the Vendor due to and after issuance of the Materials Order. The City will not reimburse the Vendor for any costs incurred after receipt of the City notice of cancellation, or for lost profits, shipment of product prior to issuance of a Materials Order or for anything not expressly permitted pursuant to this Agreement.

3. Compensation. The City shall pay Vendor for the Initial Term and for each subsequent Renewal Term, if any, an annual amount not to exceed $50,000.00 for the Materials at the unit rates set forth in the Mesa Contract. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed $150,000.00.

4. Payments. The City shall pay the Vendor monthly, based upon acceptance and delivery of Materials, 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 Materials delivered and accepted to date 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. Israel. Vendor certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

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

7. 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.

8. Agreement Subject to Appropriation. The City 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 City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City 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 City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City'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 City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Vendor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Vendor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

9. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any amendments, any City-approved Materials Order, the Mesa Contract and invoices, the documents shall govern in the order listed herein.

10. Rights and Privileges. To the extent provided under the Mesa Contract, the City 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.

11. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 10 above, the City 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 City under this Agreement including, but not limited to, the Vendor's obligation to provide the indemnification and insurance. In any event, the Vendor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City 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 Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

12. 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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: City Manager
With copy to:	GUST ROSENFELD P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire

If to Vendor: Core & Main LP
1410 West Harvard Avenue
Gilbert, Arizona 85233
Attn: Thomas Otto

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 (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) 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.

[SIGNATURES ON FOLLOWING PAGES]

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

"**City**"

CITY OF AVONDALE,
an Arizona municipal corporation

_____
Cynthia Seelhammer, Interim City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2018, before me personally appeared Cynthia Seelhammer, the Interim City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document, on behalf of the City of Avondale.

_____
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"**Vendor**"

CORE & MAIN LP,
a Florida limited partnership

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2018, before me personally appeared _____ _____, the _____ of CORE & MAIN LP, a Florida limited partnership, 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 partnership.

_____
Notary Public

(Affix notary seal here)

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CORE & MAIN LP

[Mesa Contract]

See following pages.

mesa·az

CONTRACT AMENDMENT

Contract Title Bronze Water Service Valves, Fittings and Hydrants
Contract Number 2016049 **MA/PO Number** 16000349
Amendment Number 1
Description of Change Name change, from HD Waterworks to Core & Main LP

Current contract amount $651,000 00 annually
Change Amount ☐ Increase ☐ Decrease ☒ No Change $
New contract amount $651,000 00 annually
Effective Date of Change August 1, 2017

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

Core & Main LP

Thomas Otto Digitally signed by Thomas Otto DN cn=Thomas Otto o=Core and Main ou=154-Gilbert email=thomas otto@hdsupply com c=US Date 2017 10 04 19 03 48 -07 00

Signature

Thomas Otto

Printed Name

10/4/17

Date

City of Mesa

Digitally signed by Edward Quedens DN: cn=Edward Quedens, o=City of Mesa, Arizona, ou=Business Services Director, email=ed.quedens@mesaaz.gov, c=US Date: 2017.10.05 09:44:40 -07'00'

Signature

City Manager Designee

Date

Recommended by

Larry Hall

Signature

AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA CONTRACT NUMBER 2016049
BRONZE WATER SERVICE VALVES, FITTINGS AND HYDRANTS

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Department
Mailing Address	P.O. Box 1466
	Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400
	Mesa, AZ 85201
Attention	Paul Aguilar, Procurement Officer
E-Mail	paul.aguilar@mesaaz.gov
Telephone	(480) 644-2545
Facsimile	(480) 644-2655

AND

HD Supply Waterworks, Ltd., ("Contractor")

Mailing Address	1410 W Harvard Ave
	Gilbert, AZ 85233
Delivery Address	1410 W Harvard Ave
	Gilbert, AZ 85233
Attention	Thomas Otto – Account Manager
E-Mail	thomas.otto@hdsupply.com
Telephone	623-734-6115
Facsimile	

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this _____ day of _____, 2016, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and HD Supply Waterworks, Ltd. ("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 **2016049** ("Solicitation") for **BRONZE WATER SERVICE VALVES, FITTINGS AND HYDRANTS**, 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 April 20, 2016 and ending on April 19, 2019. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.

   1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

   1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

4. **Document Order of Precedence**. In the event of any inconsistency between the terms of the body of the Agreement, the Exhibits, the Solicitation, and Response, the language of the documents will control in the following order.

a. Agreement
b. Exhibits
   1. Mesa Standard Terms & Conditions
   2. Scope of Work
   3. Service Level Agreement/Business Associate Agreement (if applicable)
   4. Other Exhibits not listed above
c. Solicitation including any addenda
d. Contractor Response

5. Payment.

5.1 **General**. Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("Pricing") in consideration of Contractor's performance of the Scope of Work during the Term.

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

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

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

5.3 **Price Adjustment**. Any requests for reasonable price adjustments must be submitted in accordance with this Section 5.3. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the 60- day period prior to each annual anniversary of the contract effective date, the Contractor may submit a written request that the City increase the prices for an amount for no more than the twelve month change in the ***Producer Price Index for*** metals and metal products, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/ppi/home.htm). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

5.4 **Renewal and Extension Pricing**. Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the

renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

a. Contractor name, address, and contact information;
b. City billing information;
c. City contract number as listed on the first page of the Agreement;
d. Invoice number and date;
e. Payment terms;
f. Date of service or delivery;
g. Description of materials or services provided;
h. If materials provided, the quantity delivered, pricing of each unit, and freight charges (as applicable);
i. Applicable Taxes; and
j. Total amount due.

5.6 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement. Else; payment will be though a traditional method of a check or Electronic Funds Transfer (EFT) as available.

5.7 **Disallowed Costs, Overpayment**. If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

6. **Insurance**.

6.1 Contractor must obtain and maintain at its expense throughout the term of Contractor's agreement, at a minimum, the types and amounts of insurance set forth in this Section 6 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.

6.2 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.

6.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the term of the Agreement.

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

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

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

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

6.9 **Types and Amounts of Insurance**. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

6.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.

6.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of $1 million per occurrence/$3 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.

7. **Requirements Contract**. Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.

8. **Notices**. All notices to be given pursuant to the Agreement will be delivered to the Contractor as listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that is attached to the Agreement as **Exhibit C**.

9. **Representations of Contractor**. To the best of Contractor's knowledge, Contractor agrees that:

a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;

b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;

c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and

d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.

10. **Mesa Standard Terms and Conditions. Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.

11. **Counterparts and Facsimile or Electronic Signatures**. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

12. **Incorporation of Recitals and Exhibits**. All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

    Exhibits to this Agreement are the following:

    - (A) Scope of Work
    - (B) Pricing
    - (C) Mesa Standard Terms and Conditions
    - (D) Technical Specification

13. **Attorneys' Fees**. The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.

14. **Additional Acts**. The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.

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

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RESPONDENT CERTIFICATION

By submitting the Response and signing this Certification, the Respondent understands and certifies to all of the following:

a) The information provided in Respondent's Response it true and accurate to the best of Respondent's knowledge.
b) Respondent is under no legal prohibition that would prevent Respondent from contracting with the City of Mesa.
c) Respondent has read and understands the Solicitation packet as a whole (including attachments, exhibits, and referenced documents) and: (i) can attest that Respondent is in compliance with the requirements of the Solicitation packet; and (ii) is capable of fully carrying out the requirements of the Solicitation as set forth in Respondent's Response.
d) To Respondent's knowledge, Respondent and Respondent's employees have no known, undisclosed conflicts of interest as defined by applicable law or City of Mesa Procurement Rules. If Respondent or Respondent employees have a known conflict of interest, Respondent has disclosed the conflict in its Response.
e) Respondent did not engage in any anti-competitive practices related to its Response or the Solicitation. The prices offered by Respondent were independently developed without consultation or collusion with any other Respondents or potential Respondents.
f) No gifts, payments or other consideration were made to any City employee, officer, elected official, agent, or consultant who has or may have a role in the procurement process for the services/materials covered by the Solicitation.
g) Respondent grants the City of Mesa permission to copy all parts of its Response including, without limitation, any documents and materials copyrighted by Respondent: (i) for the City's use in evaluating the Response; and (ii) to be disclosed in response to a public records request under Arizona's public records law (A.R.S. § 39-121 et. seq.) or other applicable law, subpoena, or other judicial process provided such disclosure is in accordance with City of Mesa Procurement Rule 6.13.
h) If a contract is awarded to Respondent as a result of the Response submitted to the Solicitation Respondent will:
    i. Provide the materials or services specified in the Response in compliance with all applicable federal, state, and local statutes, rules and policies;
    ii. Honor all elements of the Response submitted by Respondent to the City including, but not limited to, the price and the materials/services to be provided; and
    iii. Enter into an agreement with the City based on the terms and conditions of the Solicitation and the Response, subject to any negotiated exceptions and terms.
i) Respondent is current in all obligations due to the City including any amounts owed the City and any licenses/permits required for the general lawful conduct of business. Respondent shall acquire all licenses/permits necessary to lawfully conduct business specific to the Solicitation prior to the execution of a contract with the City pertaining to the Solicitation.
j) The signatory of this Certification is an officer or duly authorized agent of Respondent with full power and authority to submit binding offers for the goods/services specified herein. Respondent intends by the submission of this Certification to be bound by the terms of the Certification, Solicitation, and Response, subject to any negotiated terms/exceptions.

ACCEPTED AND AGREED TO BY RESPONDENT:

Company Name: HD Supply Waterworks

Signature: TJ Otto Digitally signed by TJ Otto DN: cn=TJ Otto, o, ou, email=thomas.otto@hdsupply.co m, c=US Date: 2016.02.15 17:24:59 -07'00'

Printed Name: Thomas Otto

Title: Account Manager

Date: 2/11/16

City Acceptance of Offer

The below document will be executed when Agreement is finalized and awarded.

ACCEPTANCE OF OFFER:

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number **2016049.**

Awarded this _____ 2015.

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: 2016.04.21 07:20:13 -07'00'

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

EXHIBIT A
SCOPE OF WORK

Vendor Response will be added here when Agreement is finalized.

1. **INTENT:** This Request for Bid is to establish a three year supply contract with a two-year renewal option for water service valves, fitting, fire hydrants and repair parts.

2. **SCOPE OF WORK:**

   a. Quantities listed are estimated based on past and present usage. Actual requirements may vary. Orders will be placed by the Materials and Supply staff on an as-needed basis.

   b. The City of Mesa only accepts certified as "No Lead" Brass and the product will be required to be stamped "N" or "NL" identifying products as No Lead.

   c. Bidders must comply with technical specifications in this bid.

   d. Except for saddles and fire hydrants, brands listed are for reference only and are not intended to be restrictive. Approved product list can be found at: http://www.mesaaz.gov/home/showdocument?id=3258

   e. If bidder has a local storefront, please indicate in Attachment A if you will extended pricing to that store, should City personnel require immediate pickup.

3. **TERM:** This Request for Bid is for awarding a firm, fixed price purchasing contract to cover a three (3) year term.

4. **RENEWALS:** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

5. **EXTENSIONS:** Upon the expiration of the Term of the Agreement, including any renewals permitted herein, at the City's sole discretion the Agreement may be extended for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials under this Agreement. The City intends to notify the Contractor in writing of its desire to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.

6. **PRICING:**

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

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

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

   b. **Price Adjustment**. Any requests for reasonable price adjustments must be submitted in accordance with this section. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment therefore Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in

providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the 60- day period prior to each annual anniversary of the contract effective date, the Contractor may submit a written request that the City increase the prices for an amount for no more than the twelve month change in the ***Producer Price Index for*** metals and metal products, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (http://www.bls.gov/ppi/home.htm). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

c. **Renewal and Extension Pricing**. Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

a. Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.

b. The Contractor shall maintain at all times during the term of this contract, a minimum amount of $1 million per occurrence/$3 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.

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

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

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

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

EXHIBIT A
SCOPE OF WORK

mesa·az

REQUIRED RESPONSE FORMS

VENDOR INFORMATION

Company Legal/Corporate Name: HD Supply Waterworks, Ltd

Doing Business As (if different than above): _____

Address: 1410 W Harvard Ave

City: Gilbert State: AZ Zip: 85233

Phone: 623 734 6115 Fax: 855 697 9794

E-Mail Address: thomas.otto@hdsupply.com Website: hdsupplywaterworks.com

DUNS # 781557975 State Where Business Entity Was Formed: Florida

Remit to Address (if different than above):

Address: PO Box 28330

City: St. Louis

State: MO Zip: 63146

Order from Address (if different from above):

Address: _____

City: _____

State: _____ Zip: _____

Contact for Questions about this bid:

Name: Thomas Otto Title: Account Manager

Phone: 623 734 6115 E-Mail Address: thomas.otto@hdsupply.com

Day-to-Day Project Contact (if awarded):

Name: same as above Title: _____

Phone: _____ E-Mail Address: _____

Sales/Use Tax Information (check one).

☐ Respondent is located outside Arizona and does NOT collect Arizona State Sales/Use Tax. (The City will pay use tax directly to the Arizona Department of Revenue.)

☐ Respondent is located outside Arizona, but is authorized to collect Arizona Sales/Use Taxes. (Respondent will invoice the City the applicable sales tax and remit the tax to the appropriate taxing authorities.)
State Sales Tax Number: _____
City Sales Tax Number: _____ City of: _____ AZ
Applicable Tax Rate: _____%

☒ Respondent is located in Arizona. (Respondent will invoice the City the applicable sales tax and remit the tax to the appropriate taxing authorities)
State Sales Tax Number: 20056616
City Sales Tax Number: _____ City of: Gilbert AZ
Applicable Tax Rate: 7.8%

EXHIBIT A
SCOPE OF WORK

EXCEPTIONS & CONFIDENTIAL INFORMATION

Exceptions (mark one).

Respondents shall indicate any and all exceptions taken to the provisions or specifications in this Solicitation. Exceptions that surface elsewhere in the Response and that do not also appear under this section shall be considered rejected by the City, invalid and of no contractual significance.

Other Forms or Documents: If the City is required by the awarded Respondent to complete and execute any other forms or documents in relation to this Solicitation, the terms, conditions, and requirements in this Solicitation shall take precedence to any and all conflicting or modifying terms, conditions or requirements of the Respondents forms or documents.

***Special Note – Any material exceptions taken to the City's Specifications and/or Standard Terms and Conditions may render a Bid Non-responsive.**

☐ No exceptions

☒ Exceptions Taken (describe exact sections to which exception is taken -attach additional pages if needed)

Pricing is fixed for a period of one year. After one year HD Supply will submit any requests for price increase with supporting documentation. Any price increase request will be a "pass-through" price increase based on an increased cost from the manufacturer.

Confidential/Proprietary Information (mark one).

☒ No confidential/proprietary materials have been included with this Response.

☐ Confidential/Proprietary materials included with Response. Respondent must identify below any portion of their Response deemed confidential or proprietary and attach additional pages if necessary (See Mesa Standard Terms and Conditions related to Public Records). Requests to deem the entire bid as confidential will not be considered. The disclosure by the City of information deemed by Respondent as confidential or proprietary is governed by City of Mesa Procurement Rules.

EXHIBIT A
SCOPE OF WORK

GENERAL QUESTIONNAIRE

1. Compliance with Applicable Law. Respondent complies with Exhibit 1, Mesa Standard Terms & Conditions S.9 "Compliance with Applicable Law"? ☒ Yes ☐ No

2. Delivery. Delivery, as stated in Detailed Specifications, can be met. ☒ Yes ☐ No
   If no, specify number of days for delivery _____

3. Payment terms. Payment Due (Not less than net 30 days): Net 30
   Payment Discount of _____% if invoices are paid within _____ days of receipt.

4. Procurement Card. Does Respondent allow payment of invoices using a Procurement Card?
   ☒ Yes ☐ No (Marking a "no" answer will not disqualify your Response.)
   Discount for Procurement Card Purchases? 0%

5. Cooperative Purchasing. The use of this Agreement as a cooperative purchasing agreement available to other governmental agencies is described in the Mesa Standard Terms and Conditions. The use of this Agreement as a cooperative purchasing agreement is subject to approval by the Respondent as designated below.

6. Does Respondent agree to extend the prices, terms and conditions of the Agreement to other agencies as specified in the Standard Terms and Conditions?
   ☒ Yes ☐ No (Marking a "no" answer will not disqualify your Response.)

Addenda.

Respondents are responsible for verifying receipt of any addenda issued by checking the City's website at www.mesaaz.gov/business/purchasing or the Vendor Self Service portal prior to the Response Due date and time. Failure to acknowledge any addenda issued may result in a response being deemed non-responsive. Failure to review addenda does not negate Respondent's initial offer and holds Respondent for any changes prior to Response Due date and time.

Acknowledgement of Receipt and Consideration of Addenda (if applicable):

Addenda # 1 ☒ 2 ☒ 3 ☐ 4 ☐

EXHIBIT A
SCOPE OF WORK

LAWFUL PRESENCE AFFIDAVIT

☒ **CHECK HERE AND SKIP THIS AFFIDAVIT IF:** Respondent is an **LLC, a Corporation or a Partnership** as indicated on your W-9

COMPLETE THIS AFFIDAVIT IF: Respondent is an **Individual (Natural Person) or a Sole Proprietor** as indicated on your W-9

ARS § 1-502 requires any person who applies to the City for a Local Public Benefit (defined as a Grant, Contract or Loan) must demonstrate through the presentation of one (1) of the following documents that he/she is lawfully present in the United States (See the Solicitation Instructions for more information).

Please place a check mark next to the applicable document and present the document to the City employee. If mailing the response, attach a copy of the document to this Affidavit. (If the document says on its face that it may not be copied or you know for reasons of confidentiality that it cannot be copied, you will need to present the document in person to the City for review and signing of the affidavit.)

☐ 1. **Arizona driver license issued after 1996.**
Print first 4 numbers/letters from license: _____

☐ 2. **Arizona non-operating identification license.**
Print first 4 numbers/letters: _____

☐ 3. **Birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.**
Year of birth: _____ Place of birth: _____

☐ 4. **United States Certificate of Birth abroad.**
Year of birth: _____ Place of birth: _____

☐ 5. **United States passport.**
Print first 4 numbers/letters on Passport: _____

☐ 6. **Foreign passport with a United States Visa.**
Print first 4 numbers/letters on Passport: _____
Print first 4 numbers/letters on Visa: _____

☐ 7. **I-94 form with a photograph.**
Print first 4 numbers on I-94: _____

☐ 8. **United States Citizenship & Immigration Services Employment Authorization Document (EAD).**
Print first 4 numbers/letters on EAD: _____

☐ 9. **Refugee travel document.**
Date of Issuance: _____ Refugee Country: _____

☐ 10. **United States Certificate of Naturalization.**
Print first 4 digits of CIS Reg. No.: _____

☐ 11. **United States Certificate of Citizenship.**
Date of Issuance: _____ Place of Issuance: _____

☐ 12. **Tribal Certificate of Indian Blood.**
Date of Issuance: _____ Name of Tribe: _____

☐ 13. **Tribal or Bureau of Indian Affairs Affidavit of Birth.**
Year of Birth: _____ Place of Birth: _____

In accordance with the requirements of Arizona law, I do swear or affirm under penalty of perjury that I am lawfully present in the United States and that the document I presented to establish this presence is true.

_____
Signature

_____
Print Name

_____
Date

_____
Business/Company Name

Verification of Attachment by City Staff:

_____
Signature Date

EXHIBIT A
SCOPE OF WORK

Respondent Company Name/ DBA: HD Supply Waterworks, Ltd	
Years in business providing similar services: Over 30 years	
Contractor's License No(s): (Submit a copy with the Response) Number of employees at location that would serve under a contract from the Solicitation:	Type:
Provide names, contact and telephone numbers of three (3) organizations that have received similar services from your company. At least one reference should be comparable in size to the City's proposed contract.	
Firm/Government Agency Name: City of Chandler	
Contact Person: Roy Chaidez	Phone:480 782 3709
Address: 1800 S McQueen Rd Chandler, AZ	Fax:
	E-Mail Address:roy.chaidez@chandleraz.gov
$ Value of Work, Supplies/Services and Dates Provided: ~$3M, Various Waterworks Supplies, Ongoing contract since 2015	
Firm/Government Agency Name: City of Phoenix	
Contact Person: Jack Thorton	Phone: 602 534 2729
Address: 2500 S 22nd Ave Phoenix, AZ	Fax:
	E-Mail Address: jack.thorton@phoenix.gov
$ Value of Work, Supplies/Services and Dates Provided: ~$5M, Various Waterworks Supplies, Ongoing contract(s) since 2012	
Firm/Government Agency Name: City of Peoria	
Contact Person: Art Lomeli	Phone: 623 451 3407
Address: 8850 N 79th Ave Peoria, AZ	Fax:
	E-Mail Address: Arthur.lomeli@peoriaaz.gov
$ Value of Work, Supplies/Services and Dates Provided: ~$2M, Various Waterworks Supplies, Ongoing contract(s) since 2015	
Vehicle/ Equipment inventory which is available for a contract pursuant to the Solicitation: None	

EXHIBIT A
SCOPE OF WORK

List any additions to equipment or personnel you anticipate if awarded the contract under this Solicitation:	
None	
Subcontractors: None List subcontractor(s) that will participate in carrying out the obligations of any resulting contract.	
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
Subcontractor Contact Name:	Phone:
Contractor License Type:	Type/Number:
List any other information which may be helpful in determining your qualifications for a potential contract:	
Delivery within 48 hours of receipt of PO.	

EXHIBIT B
PRICING AND COMPENSATION

Pursuant to all the contract specifications enumerated and described in this solicitation, we agree to furnish Bronze Water Service Valves, Fittings and Hydrants to the City of Mesa at the price(s) stated below.

Item No.	City Stock No.	Size and Description	Brand/Style	Brand & Part No. Bid	Unit Price	Est. Annual Usage	Total Price
I. COUPLINGS (AWWA BRASS UNLESS OTHERWISE SPECIFIED):							
1	65933-036	Pack Joint, 3/4" PJ x3/4"FIP	Ford C14-33-NL Or equal	Mueller P15451	$12.65	15 ea	$189.75
2	65933-141	Pack Joint, 1" PJ x 3/4" FIP	Ford C14-34-NL Or equal	Mueller P15451	$14.46	10 ea	$144.60
3	65933-051	Pack Joint, 3/4" PJ x 3/4" MIP	Ford C84-33-NL Or equal	Mueller P15428	$11.79	10 ea	$117.90
4	65933-061	Pack Joint, 3/4" CU	Ford C44-33-NL Or equal	Mueller P15403	$14.40	162 ea	$2,332.80
5	65933-065	Pack Joint, 3/4" CU x 1" CU	Ford C44-34-NL Or equal	Mueller P15403	$15.89	6 ea	$95.34
6	65933-070	Pack Joint, 1" CU	Ford C44-44-NL Or equal	Mueller P15403	$15.71	200 ea	$3,142.00
7	65933-075	Pack Joint, 1-1/2" CU	Ford C44-66-NL Or equal	Mueller P15403	$55.40	4 ea	$221.60
8	65933-080	Pack Joint, 2" CU	Ford C44-77-NL Or equal	Mueller P15403	$74.82	20 ea	$1,496.40
9	65933-085	Flexible, 4" sewer, rubber type with stop	Calder Fernco Or equal	Fernco	$3.33	30 ea	$99.90
10	65933-090	Flexible, 6" sewer, rubber type with stop	Calder Fernco Or equal	Fernco	$7.25	1 ea	$7.25
11	65933-095	Flexible, 8" sewer, rubber type with stop	Calder Fernco Or equal	Fernco	$11.15	1 ea	$11.15

EXHIBIT B
PRICING AND COMPENSATION

						Total Section I	**$7,858.69**
II. SUPPLY ITEMS:							
ADAPTER							
12	89045-010	5/8" X 3/4" to 1" Meter Adapter	Ford A24-NL Or per COM Approved Products List	Mueller 010879	10.29	1400 each	$14,406.00
FLANGE							
13	89045-064	1-1/2" Meter x 1-1/2" FIPT	Ford CF31-66-NL Or per COM Approved Products List	Mueller 010129	$33.52	85 each	$2,849.20
14	89045-065	1-1/2" Meter x 1-1/2" MIP	Ford CF-38-66-2-NL Or per COM Approved Products List	Mueller 010129	$36.20	200 each	$7,240.00
15	89045-066	2" Meter x 2" MIP	Ford CF-38-77-2-125-NL Or per COM Approved Products List	Mueller 010129	$48.29	300 each	$14,487.00
16	89045-068	2" Meter x 2" FIP	Ford CF-31-77-NL Or per COM Approved Products List	Mueller 010129	$43.76	225 each	$9,846.00
NIPPLE							
17	89045-078	2" x 2-1/2" Brass MIP	Ford BN20-025-NL Or per COM Approved Products List	HD Supply	$7.95	80 each	$636.00
RESETTER							

EXHIBIT B
PRICING AND COMPENSATION

18	89045-110	7" w/Valve, for 5/8" x 3/4" Meter	Ford VB42-7W-NL Or per COM Approved Products List	Mueller B24118R	$71.45	70 each	$5,001.50
19	89045-115	9" w/Valve, for 5/8" x 3/4" Meter	Ford VB42-9W-NL Or per COM Approved Products List	Mueller B24118R	73.63	20 each	$1,472.60
20	89045-120	10" w/Valve, for 1" Meter	Ford VB44-**1**0W-NL Or per COM Approved Products List	Mueller B24118R	$150.57	12 each	$1,806.84
21	89045-121	14" Max w/Valve for 2" Meter	Ford VBB47-14-NL Or per COM Approved Products List	Mueller B2424	$1,067.84	4 each	$4,271.36
						TOTAL SECTION II	**$62,016.50**
III.	**SERVICE SADDLES, AWWA BRASS (UNLESS OTHERWISE SPECIFIED) (Or per COM Approved Products List)**						
22	65973-035	4" AC x 3/4" IP, SGL Strap	Ford 101B-540-IP3	Mueller BR1B	$30.62	35 each	$1,071.70
23	65973-040	4" AC x 1" IP, SGL Strap	Ford 101B-540-IP4	Mueller BR1B	$30.62	10 each	$306.20
24	65973-045	4" AC x 2" IP, DBL Strap	Ford 202B-540-IP7	Mueller BR2B	$70.52	2 each	$141.04
25	65973-060	6" AC x 3/4" IP, SGL Strap	Ford 101B-750-IP3	Mueller BR1B	$42.33	120 each	$5,079.60
26	65973-065	6" AC x 1" IP, SGL Strap	Ford 101B-750-IP4	Mueller BR1B	$42.33	46 each	$1,947.18
27	65973-067	6" AC x 1-1/2" IP,	Ford **202**B-	Mueller BR1B	$84.95	3	$254.85

EXHIBIT B
PRICING AND COMPENSATION

		SGL Strap	750-IP**6**			each	
28	65973-070	6" AC x 1-1/2" IP, DBL Strap	Ford 202B-750-IP6	Mueller BR2B	$84.95	9 each	$764.55
29	65973-075	6" AC x 2" IP, DBL Strap	Ford 202B-750-IP7	Mueller BR2B	$93.40	5 each	$467.00
30	65973-080	8" AC x 3/4" IP, SGL Strap	Ford 101B-962-IP3	Mueller BR1B	$53.94	60 each	$3,236.40
31	65973-085	8" AC x 1" IP, SGL Strap	Ford 101B-962-IP4	Mueller BR1B	$53.94	37 each	$1,995.78
32	65973-090	8" AC x 1-1/2" IP, DBL Strap	Ford 202B-962-IP6	Mueller BR2B	$96.83	7 each	$677.81
33	65973-095	8" AC x 2" IP, DBL Strap	Ford 202B-962-IP7	Mueller BR2B	$105.55	7 each	$738.85
34	65973-098	10" AC x 3/4" IP, DBL Strap	Ford 202B-1212-IP3	Mueller BR2B	$113.97	1 each	$113.97
35	65973-105	12" AC x 3/4" IP, DBL Strap	Ford 202B-1438-IP3	Mueller BR2B	$133.40	8 each	$1,067.20
36	65973-110	12" AC x 1" IP, DBL Strap	Ford 202B-1438-IP4	Mueller BR2B	$133.40	24 each	$3,201.60
37	65973-115	12" AC x 1-1/2" IP, DBL Strap	Ford 202B-1438-IP6	Mueller BR2B	$150.48	1 each	$150.48
38	65973-120	12" AC x 2" IP, DBL Strap	Ford 202B-1438-IP7	Mueller BR2B	$153.22	7 each	$1,072.54
39	65973-130	14" AC x 1" IP, DBL Strap	Ford 202B-1625-IP4	Mueller BR2B	$246.20	1 each	$246.20
40	65973-150	16" AC x 1" IP, DBL Strap	Ford 202B-1840-IP4	Mueller BR2B	$338.30	4 each	$1,353.20
41	67070-011		Ford FB1000		$32.51	265	$8,615.15

EXHIBIT B
PRICING AND COMPENSATION

		3/4" CS x 3/4" CU, PJ/Ball Valve		Mueller P25008		each	
						TOTAL SECTION III	**$32,501.30**
IV. CORPORATION STOPS, AWWA BRASS (Or per COM Approved Products List):							
42	67070-010	3/4" MIP x 3/4" CU, PJ/Ball Valve	Ford FB1100-NL	Mueller P250028	$31.86	37 each	$1,178.82
43	67070-020	1" CS x 1" CU, PJ/Ball Valve	Ford FB1000-NL	Mueller P250029	$41.92	150 each	$6,288.00
44	67070-025	1" MIP x 1" CU, PJ/Ball Valve	Ford FB1100-NL	Mueller P250030	$41.92	102 each	$4,275.84
45	67070-030	1-1/2" MIP x 1-1/2" CU, PJ	Ford FB1100-NL	Mueller P250031	$94.60	25 each	$2,365.00
46	67070-040	2" MIP x 2" CU, PJ	Ford FB1100-NL	Mueller P250032	$156.44	20 each	$3,128.80
						TOTAL SECTION IV	**$17,236.46**
V. CURB STOPS, AWWA BRASS (Or per COM Approved Products List):							
47	67070-045	3/4" FIP x 3/4" FIP w/Lock Wing	Ford B11-333W-NL	Mueller 020283	$30.31	25 each	$757.75
48	67070-055	1" FIP x 1" FIP w/Lock Wing	Ford B11-444W-NL	Mueller 020283	$47.11	14 each	$659.54
49	67070-060	1-1/2" FIP x 1-1/2" FIP w/Lock Wing	Ford B11-666W-NL	Mueller 020283	$97.18	1 each	$97.18
50	67070-065	2" FIP x 2" FIP w/Lock Wing	Ford B11-777W-NL	Mueller 020283	$142.21	3 each	$426.63
ANGLE VALVE (Or per COM Approved Products List):							
51	67070-070	3/4" PJ x Meter Swivel Nut w/Lock Wing	Ford BA43-332W-NL	Mueller P24258	$44.75	503 each	$22,509.25

EXHIBIT B
PRICING AND COMPENSATION

52	67070-080	1" PJ x Meter Swivel Nut w/Lock Wing	Ford BA43-444W-NL	Mueller P24258	$68.14	160 each	$10,902.40
53	67070-085	1-1/2" PJ x Meter Flange w/Lock Wing	Ford BFA43-666W-NL	Mueller P24258	$140.02	24 each	$3,360.48
54	67070-090	2" PJ x 2" Meter Flange w/Lock Wing	Ford BFA43-777W-NL	Mueller P24258	$180.00	20 each	$3,600.00
						TOTAL SECTION V	**$42,313.23**
VI. GATE VALVE (All Gate Valves shall include the accessory kits)							
55	67082-361	Gate Valve, 4" MJ x MJ, w/Accessory Kit	Per COM Approved Products List	CLOW	$334.03	14 each	$4,676.42
56	67082-366	Gate Valve, 6" MJ x FL, w/Accessory Kit	Per COM Approved Products List	CLOW	$476.44	27 each	$12,863.88
57	67082-367	Gate Valve, 6" MJ x MJ, w/Accessory Kit	Per COM Approved Products List	CLOW	$495.95	44 each	$21,821.80
58	67082-371	Gate Valve, 8" MJ x MJ w/Accessory Kit	Per COM Approved Products List	CLOW	$755.56	16 each	$12,088.96
59	67082-372	Gate Valve, 8" MJ x FL w/Accessory Kit	Per COM Approved Products List	CLOW	$733.70	5 each	$3,668.50
60	67082-385	Gate Valve, 12" MJ x MJ, w/Accessory Kit	Per COM Approved Products List	CLOW	$1,468.67	8 each	$11,749.36
61	67082-387			CLOW	$3,546.38	4	$14,185.52

EXHIBIT B
PRICING AND COMPENSATION

		Gate Valve, 16” MJ x MJ, w/Accessory Kit	Per COM Approved Products List			each	
62	67082-400	Gate Valve, 18” FL x FL, w/Accessory Kit	Per COM Approved Products List	CLOW	$8,500.00	2 each	$17,000.00
63	67082-402	Gate Valve, 24” FL x FL, w/Accessory Kit	Per COM Approved Products List	CLOW	$12,731.00	2 each	$25,462.00
64	67071-403	Butterfly Valve, 18” FL x FL, w/Accessory Kit	See Technical Specification Section for Manufacturers	CLOW	$3,355.00	2 each	$6,710.00
65	67071-404	Butterfly Valve, 24” FL x FL, w/Accessory Kit	See Technical Specification Section for Manufacturers	CLOW	$5,930.00	2 each	$11,860.00
						TOTAL SECTION VI	**$142,086.44**
VII. DUCTILE PIPE							
66	65846-300	Pipe, 4” x 18’, Ductile, MJ w/Accessory Kit	Per COM Approved Products List	US Pipe	$300.06	9 each	$2,700.54
67	65846-314	Pipe, 6” x 20’, Ductile, MJ, w/Accessory Kit,	Per COM Approved Products List	US Pipe 18' sticks	$246.06	38 each	$9,350.28
68	65846-316	Pipe, 8” x 20’, Ductile, MJ w/Accessory Kit	Per COM Approved Products List	US Pipe 18' sticks	$320.58	15 each	$4,808.70
69	65846-342	Pipe, 12” x 20’, Ductile, MJ w/Accessory Kit	Per COM Approved Products List	US Pipe 18' sticks	$584.82	7 each	$4,093.74
70	65846-343	Pipe, 16” x 18’, Ductile, MJ w/Accessory Kit	Per COM Approved Products List	US Pipe	$1,144.26	2 each	$2,288.52
						TOTAL SECTION VII	**$23,241.78**

EXHIBIT B
PRICING AND COMPENSATION

VIII. HYDRANT (Each hydrant shall be furnished with an MJ accessory kit without gland - See Approved Products List for specific hydrant requirements.)							
71	34060-500	Hydrant, Clow Medallion, 3'6" Bury w/MJ Acc Kit Less Gland	Clow Medallion	Clow	$1,330.00	100 each	$133,000.00
72	34060-502	Hydrant, Clow Medallion, 4'6" Bury w/MJ Acc Kit Less Gland	Clow Medallion	Clow	$1,350.00	100 each	$135,000.00
73	34060-504	Hydrant, Clow Medallion, 5' Bury w/MJ Acc Kit Less Gland	Clow Medallion	Clow	$1,400.00	100 each	$140,000.00
New	34060-503	Hydrant, 4' Direct Bury w/Accessory Kit	Clow Medallion	Clow	$1,375.00	100	
74	34060-501	Hydrant, Clow Medallion, 4' Bury w/MJ Acc Kit Less Gland	Clow Medallion	Clow	$1,300.00	100 each	$130,000.00
		Clow (Medallion) 20% Off Catalog Price					
		Hydrant, Clow (F2500) **PARTS ONLY** 10% Off Catalog Price					
75	34060-500	Hydrant, 6" WB-67, 3'6" Bury, w/MJ Acc Kit Less Gland	Waterous Pacer WB-67-250		$	100 each	$
76	34060-502	Hydrant, 6" WB-67, 4'6" Bury, w/MJ Acc Kit Less Gland	Waterous Pacer WB-67-250		$	100 each	$
77	34060-504				$	100	$

EXHIBIT B
PRICING AND COMPENSATION

		Hydrant, 6" WB-67, 5' Bury, w/MJ Acc Kit Less Gland	Waterous Pacer WB-67-250			each	
New	34060-503	Hydrant, 4' Direct Bury w/Accessory Kit	Waterous Pacer WB-67-250		$	100	$
78	34060-501	Hydrant, 6" WB-67, 4' Bury, w/MJ Acc Kit Less Gland	Waterous Pacer WB-67-250		$	100 each	$
		Waterous Pacer **20%** Over Cost for all Related Parts					
79	34060-500	Hydrant, Modern Centurion, 3'6" Bury, w/MJ Acc Kit Less Gland	Mueller Modern Centurion		$	100 each	$
80	34060-502	Hydrant, Modern Centurion, 4'6" Bury, w/MJ Acc Kit Less Gland	Mueller Modern Centurion		$	100 each	$
81	34060-504	Hydrant, Modern Centurion, 5" Bury, w/MJ Acc Kit Less Gland	Mueller Modern Centurion		$	100 each	$
New	34060-503	Hydrant, 4' Direct Bury w/Accessory Kit	Mueller Modern Centurion		$	100	$
82	34060-501	Hydrant, Modern Centurion, 4' Bury, w/MJ Acc Kit Less Gland	Mueller Modern Centurion		$	100 each	$
		Mueller 20**%** Over Cost for all Related Parts					
		Hydrant, Pacific States Model 1 **PARTS ONLY** 40**%** Over Cost for all Related Parts					

EXHIBIT B
PRICING AND COMPENSATION

		Hydrant, Pacific States Model 2 – **PARTS ONLY** 40**%** Over Cost for all Related Parts t	
TOTAL SECTION VIII			**$538,000.00**

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the bid prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have a 1.75% removed from the taxable item(s) for the purpose of award evaluation (i.25).
FOB: Destination, Freight Prepaid and Allowed
Freight Costs: Unit prices should include all Shipping and Transportation Costs
No fuel surcharges will be accepted
Payment terms (not less than net 30 days): **Net 30**
Prompt Payment Discount of **0** % if invoices are paid within _____ days of receipt.

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

X Yes _____ No (A "no" answer will not disqualify your bid.

Will you allow payment of invoices using a Procurement Card? X Yes _____ No
Discount for Procurement Card Purchases? 0%

Bidder complies with S.9 ”Compliance With Applicable Law”? **X** Yes _____ No

ADDENDA

Bidders 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 **YES**
Addenda #2 **YES**

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.

3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.

4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

5. **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.

6. **NON- EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.

7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.

8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAWS.**

   a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.

   b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace.

Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.

   i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

   ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.

   iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

   iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.

   v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods of services to the City.

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

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

b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.

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

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

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

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

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

14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.

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

16. **DEFAULT.**

a. A party will be in default if that party:

i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;

ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;

iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or

iv. Fails to carry out any term, promise, or condition of the Agreement.

b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.

c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.

d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.

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

a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.

b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the bid and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.

c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.

d. Neither party will be liable for incidental, special, or consequential damages.

18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

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

20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not

have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.

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

23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.

24. **INDEMNIFICATION/LIABILITY.**

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

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

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

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

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

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

27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or

performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.

28. **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.

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

30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.

31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.

32. **RISK OF LOSS**. Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.

33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.

34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.

35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.

36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).

37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the

public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

38. **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

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

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

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

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

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.

40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.

46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.

EXHIBIT 3

POTABLE WATER COMPONENT LOW-LEAD REQUIREMENT

All brass components, except service saddles, that come into contact with potable water shall comply with NSF 61 and NSF/ANSI 372 and conform to lead content requirements for lead-free components as required by the U.S. Safe Drinking Water Act in effect as of January 4, 2014.

COMPONENTS COVERED BY WATER RESOURCES APPROVED PRODUCTS LIST

The following components shall meet the requirements, specifications, and approved manufacturers and models as described in the City of Mesa Approved Products List – Water (APL). Unless otherwise indicated, no substitutions shall be allowed for approved manufacturers and/or model numbers listed on the APL:

- Meter Flanges/Couplings – APL W-8 modified to include the following models:
    - Ford CF-38-66-2-NL or approved equal
    - Ford CF-38-77-2-125-NL or approval equal
- Service Saddles – APL W-8
- Corporation Stops – APL W-8
- Angle Valves – APL W-8
- Gate Valves – APL W-4
- Ductile Iron Pipe – APL W-13
- Fire Hydrants – W-2

BUTTERFLY VALVES

STANDARDS:

This specification encompasses rubber-seated butterfly valves for potable water service in direct bury service, per AWWA C504, latest edition.

Butterfly valves shall conform to the requirements of MAG Specification Section 630, and the City of Mesa amendments thereof.

Butterfly valves shall be certified to, or compliant with, NSF/ANSI Standard 61.

Butterfly valves shall be designed for buried service and be fitted with a manual actuator with a 2” square operating nut.

Manual actuators shall be furnished with a torque rating calculated in accordance with the requirements of AWWA C-504, and shall include a permanently lubricated enclosed worm gear or traveling nut type with no external moving parts. The actuator shall be designed to hold the valve disc in any intermediate position between full-closed and full-open without creeping or fluttering.

Butterfly valves encompassed by this specification shall meet the following minimums for steady-state fluid working pressure, steady-state fluid differential pressure, and velocity capability: Class 150B – 150 psi, and 16 ft/sec, or greater.

MATERIALS:

- CAST IRON VALVE BODY: Cast iron shall meet or exceed the requirements of ASTM A126 Class B.
- DUCTILE IRON VALVE BODY: Ductile iron shall meet or exceed the requirements of ASTM A536.
- CAST IRON VALVE DISC/VANE: Cast iron shall meet or exceed the requirements of ASTM A48 or ASTM A126.
- DUCTILE IRON VALVE DISC/VANE: Ductile iron shall meet or exceed the requirements of ASTM A536.

EXHIBIT 3

- STAINLESS STEEL VALVE DISC/VANE: Type 304 or 316 stainless steel meeting or exceeding ASTM requirements, or per project specific conditions and requirements.
- STAINLESS STEEL VALVE STEM: Type 304 or 316 stainless steel meeting or exceeding the requirements of ASTM A276, or per project specific conditions and requirements.
- EXPOSED BODY AND ACTUATOR BOLTS, NUTS, and SCREWS: Exposed main valve and actuator bolts, nuts, and screws shall be type 304 or type 316 stainless steel per ASTM A276 and shall conform to the requirements of AWWA C504.
- FLANGE BOLTS, NUTS, AND GASKETS: Flange bolts and nuts shall be per APL sheet W-12, or per project specific conditions and requirements. In addition, valve flange maximum torque values shall be considered when selecting flange type, fasteners, and gaskets for the required joint working pressure.
- VALVE SEAT: Rubber valve seat material shall conform to AWWA C504 specifications and shall be NBR or EDPM, or per project specific conditions and requirements.
- VALVE STEM SEALS: Valve stem seals shall conform to AWWA C504 specifications and shall be NBR or EDPM, or per project specific conditions and requirements.
- INTERIOR EPOXY COATING: Interior valve surfaces shall be epoxy coated to a minimum dry film thickness of 6 mils per AWWA C504 and AWWA C550, and shall be ANSI/NSF 61 certified or compliant.
- EXTERIOR EPOXY COATING: Exterior valve and actuator surfaces shall be epoxy coated to a minimum dry film thickness of 6 mils per AWWA C504 and C550.

APPROVED MANUFACTURERS & MODELS:

1. HENRY PRATT:
    a. AWWA SERIES 2
    b. TRITON XR 70
    c. HP250 SERIES
    d. GROUNDHOG

2. MILLIKEN:
    a. 510, 511, 510A, 511A

3. MUELLER:
    a. LINESEAL III, LINESEAL SERIES XP

4. CLOW:
    a. SERIES 1450, SERIES 4500

5. KENNEDY:
    a. SERIES 1450, SERIES 4500

6. M&H:
    a. SERIES 1450, SERIES 4500

7. DEZURIK:
    a. STYLE BAW

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CORE & MAIN LP

[Materials Order(s)]

See following pages (to be attached subsequent to execution).