



AGREEMENT PURSUANT TO SOLICITATION

**CITY OF MESA AGREEMENT 2021165
GASOLINE AND DIESEL FUEL**

CITY OF MESA, Arizona (“City”)

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 450 Mesa, AZ 85201
Attention	Evan Karl, NIGP-CPP, CPPB Procurement Officer I
E-Mail	Evan.Karl@MesaAZ.gov
Telephone	(480) 644-2356

With a copy to: City of Mesa – Fleet Services
Attn: Maria Hung
Fleet Support Services Administrator
P.O. Box 1466
Mesa, AZ 85211-1466
Maria.Hung@MesaAZ.gov

AND

WESTERN STATES PETROLEUM, (“Contractor”)

Mailing Address	450 S. 15 th Avenue Phoenix, AZ 85007
Remit to Address	
Attention	Charles Yerkes Sales Manager
E-Mail	Charles@WesternStatesPetroleum.com
Telephone	(602) 252-4011
Facsimile	(602) 340-9621

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to Solicitation ("Agreement") is entered into this 24th day of August 2021, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **Western States Petroleum**, a(n) Arizona corporation ("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 **2021165** ("Solicitation") for **Gasoline and Diesel Fuel**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

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

TERMS & CONDITIONS

- 1. **Term.** This Agreement is for a term beginning on **October 1, 2021** and ending on **September 30, 2024**. 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) years. 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.
 - 1.3 **Delivery.** Delivery shall be made to the location(s) contained in the Scope of Work within one (1) day after receipt of an order.
- 2. **Scope of Work.** The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

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

3. **Orders.** Orders 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. 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.** The price 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 or allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

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

5.3 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial Term. If the Agreement is renewed in accordance with Section 6, percentages may not be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the parties. The Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the previous section. There is no guarantee the City will accept a price adjustment.

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

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

- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable Taxes; and
- j. Total amount due.

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

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

6. **Insurance.**

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

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

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

6.4 Each insurance policy required under the Agreement must be in effect at or 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 \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.
 - 6.9.3 The Contractor shall maintain Environmental Pollution Liability insurance with the same limits as required for the Commercial General Liability.
 - 6.9.4 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.
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) Auction Procedures and Bidder Terms and Conditions
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.

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 is 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: Western States Petroleum

Signature: 

Printed Name: Charles Yerkes

Title: Sales Manager

Date: May 24, 2021

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 2021165.

Awarded this ____ day of _____, 2021.

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

REVIEWED BY:

By: Evan Karl
Evan Karl, NIGP-CPP, CPPB
Procurement Officer I

EXHIBIT A
SCOPE OF WORK

1. **INVENTORY LEVELS:** The Contractor's inventory level shall be sufficient to provide daily support of each agency. Failure to supply item(s) within forty-eight (48) hours of order placement may result in ordering from an alternate supplier. Repeated incidents of late delivery shall be grounds for termination of the contract.
2. **HAZARD COMMUNICATION REQUIREMENTS:** Contractor agrees to provide Material Safety Data Sheets (MSDS) for all substances that come under the Federal Toxic and Hazardous Substance - Hazard Communication Standard, (reference - Occupational Safety and Health Standard, Subpart -2- Toxic and Hazardous Substances - Hazardous Communication Standard. Section 1910 - 1200 Hazard Communication). MSDS copies will be provided separately and simultaneously to each City, Town and School Districts listed below.
3. **OPIS INDEX PRICING:** Contractor will be required to provide a fee (markup/discount) to be charged or deducted per gallon from the OPIS index price published every Monday. Bid prices shall be in cents per gallon to four decimal points and shall be based upon the "Oil Price Information Service (OPIS)" index for Arizona. Contractor will insert the amount of markup or discount upon which their price is calculated against the OPIS index. Pricing during the contract will be based on the OPIS average rack price as determined each Monday and will be in effect for the week following publication as outlined in the OPIS index. Contractor shall e-mail a copy of the weekly OPIS index to each agencies and school's Fleet Services or the school's District Vehicle Maintenance office.
4. **EXCISE TAX REBATES & ON ROAD AND OFF ROAD TAXES:** Barring future prohibitive legislation, the successful Contractor agrees to sell all gasoline and diesel fuel to the Agencies FREE OF FEDERAL EXCISE TAX. The Cities and agencies are F.E.T. exempt, and the Contractor agrees to accept responsibility for filing for tax credits or refunds in accordance with IRS Notice 88-13 (February 8, 1988) and the Budget Reconciliation Act of 1987. The City and other participating agencies will furnish exemption certificates upon request.
5. **SPLIT DELIVERY AND TOP-OFF LOAD REQUIREMENTS:** The City and the named agencies currently request that some deliveries be split between multiple locations. It is highly preferable that these services continue to be available. ***Split deliveries to multiple locations are not to be combined for the purpose of receiving a lower per gallon rate.*** The Arizona Department of Weight and Measures requires an annual vapor recovery test be performed on all qualifying tanks. ***For annual vapor recovery testing, vendors must charge the full tank-load (5,000 gallons or more) discount rate for top-off and split fuel deliveries.*** In order to comply with this directive, top-off loads will be requested as necessary. The Contractor shall indicate whether split deliveries and top-off loads are offered in the space provided on the bid form and specify the charges, if any, for such services.
6. **SPILLAGE:** The Contractor will be responsible for the clean-up of any contamination or spillage resulting from delivery and unloading. A clear notation of all spills must be made on all delivery tickets and the order desk must be notified immediately after the spill occurs.
7. **VIOLATIONS:** In the event that the City receives any fine or penalty from a regulatory agency for environmental violations that occur as a result of the actions of the Contractor, the Contractor shall reimburse the City for the cost of any such fines or penalties including administrative costs, environmental remediation actions, and costs associated with site restoration.
8. **REGULATORY COMPLIANCE HISTORY:** Provide a detailed description of all enforcement violations/actions that have occurred from environmental regulatory agencies as a result of transferring product to stationary tanks during the last three (3) years. Failure to report any such violations or enforcement actions may result in disqualification.
9. **DELIVERY TICKETS:** All drivers shall present at time of delivery a Fuel Delivery Ticket that delineates the Contractor's name and address, site information, tank numbers (if applicable), fuel personal contact cell number, brand and grade of fuel. An additional notation of the spill bucket being clean and dry when the driver leaves the drop site must all be made on the delivery ticket.

Also, the driver must notify fuel personal when leaving the rack to accept loads. The buyer shall only authorize payment for the actual quantity of fuel delivered to each site.

10. **PRESSURE DECAL:** No fuel truck or tanker is allowed on site if current Pressure Decal has expired.
11. **DELIVERY METHOD:** Tank Wagon deliveries for gasoline and diesel shall be for a maximum of 4,999 gallons. Truck and Trailer deliveries for gasoline and diesel shall be for a minimum of 5,000 gallons. On the B15 or B20 mixtures, City of Mesa's required method is racked mixed and not mixed in City owned tanks.
12. **INSPECTIONS:** The Contractor shall verify the volume of the contents of the tank(s) receiving a delivery by sticking the tank and performing volumetric calculations to ensure the tank has an adequate volume to receive the load without causing a spill or overfill before transferring the contents of load into the tank. The Contractor shall ensure that spill buckets or receptacles are free of water, product, and debris before transferring any fuel into the associated tank and after any such transfer has been completed. Additionally, the Contractor shall conduct all inspections of Stage I vapor recovery system components installed on both the delivery vehicle and the tank receiving the delivery as provided in Maricopa County Rule 353 (STORAGE AND LOADING OF GASOLINE AT A GASOLINE DISPENSING FACILITY).
13. **INVOICING INSTRUCTIONS:**

City of Mesa

The City will pay the Contractor within ten (10) days of product acceptance, providing a properly documented delivery ticket and a certified invoice, in duplicate, is furnished to:

City of Mesa
Fleet Services
310 E. 6th Street
P. O. BOX 1466
Mesa, AZ 85211 1466
Maria.Hung@MesaAZ.gov

Mesa Public Schools

The District will pay the Contractor within ten (10) days of product acceptance, providing a properly documented delivery ticket and a certified invoice, in duplicate, is furnished to:

Mesa Unified School District No. 4
Accounts Payable
63 E. Main Street #101
Mesa, AZ 85201-7422
Vehicle Maintenance: jgestal@mpsaz.org and whfrizell@mpsaz.org
Accounts Payable: lknox@mpsaz.org

Town of Gilbert

The Town will pay the Contractor within twenty (20) days of product acceptance, providing a properly documented delivery ticket and a certified invoice, in duplicate, is furnished to:

Attn: NASC - North Area Service Center
900 E. Juniper Avenue
Gilbert, AZ 85296

Attn: SASC - South Area Service Center
4760 S. Greenfield Road
Gilbert, AZ 85296

Attn.: Jeff Stein (all Fire Stations)
85 E. Civic Center Drive
Gilbert, AZ 85296

City of Glendale

The City will pay the Contractor within twenty (20) days of product acceptance, providing a properly documented delivery ticket and a certified invoice, is furnished to:

City of Glendale
Fleet Management
6210 W. Myrtle Avenue, Suite 111
Glendale, AZ 85301-1700
dhowitt@glendaleaz.com
sressler@glendaleaz.com

Tempe Union High School District

Tempe Union High Schools will pay the Contractor within thirty (30) days of product acceptance, providing a properly documented delivery ticket and a certified invoice, in duplicate, is furnished to:

500 West Guadalupe Road
Tempe, AZ 85283
ap@tempeunion.org

Fowler Elementary School District

Fowler ESD will pay the Contractor within thirty (30) days of product acceptance, providing a properly documented delivery ticket and a certified invoice is furnished to:

Fowler ESD – Accounts Payable
1617 S. 67th Ave.
Phoenix, AZ 85043
ap@fesd.org

General Note

Prices and extensions must appear on all copies of an invoice. The Contractor will be promptly notified of any disputed invoice.

14. **FUEL SPECIFICATIONS:** Gasoline to be refinery blended. Contractor shall furnish detailed specifications of the fuel offered upon request. MSDS sheets are required to be submitted with the bid.

Unleaded Gasoline, 87 minimum octane per ASTM D-4814.
Pricing Unit = Gallon

Diesel Motor Fuel, Ultra-Low Sulphur per ASTM D-975-02, Grade 2D and Federal Specification VVF-8008, Grade of 2.
Pricing Unit = Gallon

Diesel Motor Fuel, Ultra-Low Sulphur (Red Dye) per ASTM D-975-02, Grade 2D and Federal Specification VVF8008, Grade of 2.
Pricing Unit = Gallon

Diesel Motor Fuel, Biodiesel, B5 per ASTM D-6751, Grade 2D and Federal Specification VVF8008, Grade of 2.
Pricing Unit = Gallon

Diesel Motor Fuel, Biodiesel, B20 per ASTM D-6751, Grade 2D and Federal Specification VVF8008, Grade of 2.
Pricing Unit = Gallon

15. **OXYGENATED FUEL PROGRAM:** Maricopa County has mandated an oxygenated fuel program to be used by each agency during predetermined months of this contract. The Contractor must be able to supply unleaded regular gasoline as an oxygenated blend that will comply with Maricopa County requirements. This should include the ability to supply ethanol.

16. **FUEL SERVICES – EMERGENCY PRIORITY DELIVERY:** Due to the public safety nature of our business it is imperative that the City of Mesa receive priority fuel deliveries 24/7 (prioritized over the retail sector) during the following emergency situations:

- **Fuel shortages caused by product availability.**
- **Declared State of Emergency as declared by either the Mayor or Governor’s Office**

The City of Mesa will only exercise this contract provision based upon the above conditions; however, the City may require that the fuel Contractor move fuel from one City tank location to another to balance our capability in the event that fuel shortages exist. The City will expect that the Contractor will work closely with the City of Mesa, Fleet Services Department to address these priorities as they occur.

17. **DELIVERY LOCATIONS:**

CITY OF MESA:

Item No.	Department Name/Address	Type of Fuel	Tank Quantity Size in Gal. per Tank.
*1	Fleet Services (West) 300 East 6th Street Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded <small>Vaulted tanks</small>	Six (6) - 12,000
		#2 ULS Diesel & Bio-Diesel <small>Vaulted tanks</small>	Three (3) - 12,000
2	Fleet Services (East) 6935 E. Decatur Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded <small>Vaulted tanks</small>	Six (6) - 12,000
		#2 ULS Diesel & Bio-Diesel <small>Vaulted tanks</small>	Three (3) - 12,000
3	Falcon Field Airport Police/Fire/Customer Service Substation 4534 E. McKellips Road Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded	One (1) - 10,000
		#2 ULS Diesel	One (1) - 10,000
4	Superstition Police/Fire Substation 2430 South Ellsworth Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded	One (1) - 12,000
		#2 ULS Diesel	One (1) - 12,000
*5	Red Mountain Police Substation 4333 E. University Dr. Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded	Two (2) - 15,000
6	Fiesta Police Substation 1010 W. Grove Avenue Mesa, AZ Secure Site	CBG Ethanol 10% Unleaded	Two (2) – 15,000
*7	Queen Creek Utility Yard 34630 N. Schnepf Road Queen Creek, AZ Secure Site	CBG Ethanol 10% Unleaded <small>above-ground tank</small>	One (1) – 1,000
*8	Fire Maintenance-Resource Management 708 W Baseline Road Mesa, AZ Secure Site	#2 ULS Diesel <small>above-ground trailer</small>	One (1) – 580

Item No.	Department Name/Address	Type of Fuel	Tank Quantity Size in Gal. per Tank.
*9	Fire Station #202 830 S Stapley Drive Mesa, AZ	#2 ULS Diesel above-ground trailer	One (1) – 580
*10	Fire Station #203 324 S Alma School Road Mesa, AZ Secure Site	#2 ULS Diesel above-ground tank	One (1) – 3,000
*11	Fire Station #205 730 S. Greenfield Road Mesa, AZ	#2 ULS Diesel above-ground trailer	One (1) – 580
*12	Fire Station #209 7035 E Southern Avenue Mesa, AZ	#2 ULS Diesel above-ground trailer	One (1) – 580
*13	Fire Station #216 7966 E. McDowell Road Mesa, AZ	#2 ULS Diesel above-ground tank	One (1) – 1,000
*14	Fire Station #221 In process of being built Mesa, AZ Secure Site	#2 ULS Diesel above-ground tank CBG Ethanol 10% Unleaded above-ground tank	One Third (1/3) – 2,000 (Split tank) Two Thirds (2/3) – 4,000 (Split tank)
*15	Fire Station #240/Fire & Medical Training Center 3260 N 40 th Street Mesa, AZ Secure Site	#2 ULS Diesel above-ground trailer	One (1) – 580
16	Parks & Recreation - Dobson Ranch Golf Course 2155 S. Dobson Road Mesa, AZ Secure Site	#2 ULS Diesel	One (1) - 3,000
17	Parks & Recreations - Cub Stadium Maintenance Facility 2330 W Rio Salado Pkwy Mesa, AZ Secure Site	#2 ULS Diesel above-ground tank CBG Ethanol 10% Unleaded above-ground tank	Half (1/2) – 500 (Split tank) Half (1/2) – 500 (Split tank)
18	Various generator stations located around the City that may require deliveries of up to 3,000 gals. Annually. All generator sites are Secured Sites	CBG Ethanol 10% Unleaded #2 ULS Diesel Red Dye Diesel	Varies

Location #1 will use approximately 66% of the total estimated fuel quantity. Location #1 will place all orders and specify the delivery site at time of order. Unless noted otherwise, all tanks are below ground, but not all are subject to "LUST" tax. * Above ground locations are exempt. The City's three (3) Police substations are secured sites. Deliveries to these locations must be made between 6:30 AM and 2:30 PM weekdays.

All deliveries must be phoned in to City personnel located at drop site at least 30 minutes prior to delivery.

MESA PUBLIC SCHOOLS NO. 4

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty Size in Gal. per Tank
1	Transportation Dept. Stapley – Satellite 549 N. Stapley Drt. Mesa, AZ	CBG Ethanol 10% Unleaded 8,000 gal 3x /month	One (1) – 15,000
		#2 ULS Diesel 1,400 gal. 1x /month	One (1) – 15,000
		#2 ULS Red Dye 5,150 gal 1x /month	One (1) – 15,000
2	Broadway - Satellite 109 E. Broadway Rd Mesa, AZ	CBG Ethanol 10% Unleaded 2,000 gal 1x /month	One (1) - 15,000
		#2 ULS Diesel 1,900 gal. 1 x / quarterly	One (1) - 15,000
		#2 ULS Red Dye 8,000 gal 1x /month	One (1) - 15,000
3	Fremont - Satellite 837 N. Power Rd Mesa, AZ	CBG Ethanol 10% Unleaded 5,500 gal 1x /month	One (1) - 15,000
		#2 ULS Diesel 1,300 gal. 1x /quarterly	One (1) - 15,000
		#2 ULS Red Dye 8,000 gal 1x /month	One (1) – 15,000
<p>Note: Location #1 will order all fuel and specify the delivery site at time of order. All tanks are below ground, but not all are subject to "LUST" tax. Buyers will specify which locations are exempt.</p> <p>Monthly usage varies with school schedules, August through April are high usage months, where May through July are low usage months.</p> <p>Delivery hours: Stapley- 5:00 am to 6:00 pm Fremont- 5:00 am to 6:00 pm Broadway- 5:00 am to 5:00 pm</p>			

TOWN OF GILBERT

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty Size in Gal. per Tank
1	Site: 001 NASC 900 E Juniper Ave. (M-Th. 7:30-5:00) <i>Deliveries: On Guadalupe Rd East of Lindsay Rd, go south on Freestone Pkwy which will lead you directly to our entrance gate to be buzzed in)</i> <i>Typical orders 5,000-7,500 gal. / week</i>	CBG Ethanol 10% Unleaded (underground)	One (1) - 12,000
		CBG Ethanol 10% Unleaded (underground)	One (1) – 6,000
		Diesel B20 (underground)	One (1) – 6,000

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty Size in Gal. per Tank
2	Site: 003 SASC 4760 S. GREENFIELD RD. (M-F. 7:30-5:00) <i>Deliveries: On Guadalupe Rd East of Lindsay Rd, go south on Freestone Pkwy which will lead you directly to our entrance gate to be buzzed in)</i> <i>Typical orders 7,500-15,000 gal. / week</i>	Diesel B20 (underground)	One (1) - 20,000
		CBG Ethanol 10% Unleaded (underground)	One (1) - 5,000
		CBG Ethanol 10% Unleaded (underground)	One (1) - 10,000
3	Site: 251 Fire Station 1 2730 E. Williams Field (M-Th. 6:00-4:00) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i> <i>Typical orders 1,000-1,500 gal. / month</i>	CBG Ethanol 10% Unleaded (above ground)	One (1) - 2,000
		*Diesel B20 (above ground)	One (1) - 8,000
4	Site: 252 Fire Station 252 2855 E. Guadalupe Rd. (M-Th. 6:00-4:00) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000
5	Site: 253 Fire Station 253 1011 E Guadalupe Rd. (M-Th. 6:00-4:00) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000
6	Site: 255 Fire Station 255 3630 E. Germann Rd. (M-Th. 6:00-4:00) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000
7	Site: 256 Fire Station 256 3595 E. Warner Rd. (M-Th. 6-4) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000
8	Site: 257 Fire Station 257 625 W. Warner Rd. (M-Th. 6-4) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty Size in Gal. per Tank
9	Site: 258 Fire Station 258 1095 E. Germann Rd. (M-Th. 6-4) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000
10	Site: 2510 Fire Station 1330 W. Guadalupe Rd. (M-Th. 6-4) <i>Deliveries: Contact Jeff Stein to access fuel tanks (480) 503-6363</i>	*Diesel B20 (above ground)	One (1) - 2,000

*Typical Orders are 500 gallons per month

TEMPE UNION HIGH SCHOOL DISTRICT

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty - Size in Gal.
1	District Office 500 West Guadalupe Road, Tempe, AZ 85283	Unleaded & #2 Diesel (underground)	Two (2) 12,000
2	Mountain Pointe 4201 E. Knox Road, Phoenix, AZ 85044	#2 Diesel (underground)	One (1) 500

FOWLER ELEMENTARY SCHOOL DISTRICT

Loc. No.	Department Name/Address	Type of Fuel	Tank Qty - Size in Gal.
1	District 1617 S. 67 th Ave. Phoenix, AZ 85043	Unleaded & #2 Diesel (underground)	Two (2) 15,000 diesel One (1) 4,000 unleaded

5,000 gallons of diesel per month, 20,000 gallons of unleaded per year

CITY OF GLENDALE:

Item No.	Department Name/Address	Type of Fuel	Tank Qty - Size in Gal. per Tank.
1	Maintenance Yard 6210 W. Myrtle Avenue Glendale, AZ 85301	CBG Ethanol 10% Unleaded #2 ULS Diesel	One (1) - 12,000 One (1) - 12,000
2	Fire Station #153 14061 N. 59 th Avenue Glendale, AZ 85306	Unleaded #2 ULS Diesel	One (1) - 12,000 One (1) - 12,000

Item No.	Department Name/Address	Type of Fuel	Tank Qty - Size in Gal. per Tank.
3	Fire/Police Station #155 6255 W. Union Hills Road Glendale, AZ 85308 Secure Site	CBG Ethanol 10% Unleaded #2 ULS Diesel	One (1) – 12,000 One (1) - 12,000
4	Glendale Landfill 11480 W. Glendale Avenue Glendale, AZ 85311	#2 ULS Diesel Mobile Fuel Truck CBG Ethanol 10% Unleaded #2 ULS Diesel	One (1) - 12,000 ABOVE GROUND One (1) - 500 One (1) - 2,000
5	Various generator stations located around the City that may require deliveries of up to 1,000 gals. Annually.	#2 ULS Diesel – Red Dye	Varies

Location #1 will use approximately 70% of the total estimated fuel quantity. Location #1 will place all orders and specify the delivery site at time of order. Unless noted otherwise, all tanks are below ground, but not all are subject to "LUST" tax. * Above ground locations are exempt. Deliveries to Location #2 must be made between 7:00AM and 9:00AM weekdays. Location #3 is a secured site, and deliveries must be phoned in to City personnel at least 30 minutes prior to delivery for site access. Deliveries to Location #4 must be made between 6:00AM and 8:00AM weekdays.

**EXHIBIT B
PRICING**

Item	Description	Vendor Discount / Markup off OPIS
	Truck & Trailer	
1	CBG Ethanol 10% Unleaded Gasoline	(\$0.1050)
2	#2 ULS Diesel Fuels (Clear Diesel)	(\$0.0685)
3	#2 ULS Biodiesel Fuels (B20)	(\$0.1325)
4	#2 ULS Biodiesel Fuels (B15)	(\$0.1325)
5	#2 ULS Diesel - Red Dye	(\$0.0700)
	Tank Wagon	
6	CBG Ethanol 10% Unleaded Gasoline	\$0.0500
7	#2 ULS Diesel Fuels (Clear Diesel)	\$0.0575
8	#2 ULS Diesel - Red Dye	\$0.0550

Will Contractor provide:

- a. split load deliveries: Yes No
- b. tank top-off deliveries: Yes No

If "yes", what is the cost for one extra stop: \$ 30.⁰⁰
 For additional stops: \$ 30.⁰⁰ each

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.** If Contractor subcontracts work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned, either in whole or in part, without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right, at its option, to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits/licenses and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve compliance throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace.

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

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

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

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

otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, then Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations, whether or not related to the Agreement, due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
 12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public body, subject to Arizona's public records laws (A.R.S. § 39-121 *et seq.*) and any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
 - a. If Contractor believes documents related to the Agreement contain trade secrets or other proprietary data, Contractor must have notified the City pursuant to Mesa Procurement Rules Section 2.1 or notified the City with a notification statement specifically identifying the trade secrets or other proprietary data that Contractor believes should remain confidential.
 - b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other 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 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.** In accordance with the City's current background check policies, the City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement who will have access to the City's information, data, or facilities. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
 15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any 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 of the Agreement if that party:
 - i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;

- ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or 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 will provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default, unless the default is of a nature that it is reasonably anticipated to affect the health, safety or welfare of the public and, in such an event, the non-defaulting party may require a minimum seven (7) days to cure the default from the date of receipt of the notice; the cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement. Failure of the defaulting party to cure the default will entitle the non-defaulting party to the election of remedies specific to the party as set forth in section 17 below.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event demand is made and no written assurance is given within ten (10) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement entitling the City to terminate the Agreement in accordance with section 17(a) below.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services or materials required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price in the Agreement, the City may recover the excess cost by: (i) requiring immediate reimbursement by the Contractor to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as permitted by law. Costs in this Subsection (b) include any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement, in part or in whole, for its sole convenience upon thirty (30) calendar days' written notice. Contractor acknowledges that, as with any termination permitted under this Agreement, in the event of a termination for convenience, Contractor is only entitled to payment in accordance with section 22

(Payment to Contractor Upon Termination); Contractor will not be entitled to any anticipated lost profits had the Agreement been performed to completion.

20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY 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 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 for any reason, Contractor will be entitled only to payments authorized under the Agreement for those services performed or materials provided in accordance with the Agreement up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this Agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION; LIABILITY.**
 - a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold harmless the City, its elected officials, agents, representatives and employees (collectively, including the City, "City Personnel") from and against any and all liabilities, demands, claims, suits, penalties, obligations, losses, damages, causes of action, fines or judgments of any kind, including costs, attorneys', witnesses' and expert witnesses' fees, and expenses incident thereto (all of the foregoing, collectively "Claims") imposed upon or asserted against City Personnel by a third party relating to, arising out of or resulting from, in whole or in part: (i) services or materials provided under this Agreement by Contractor or its officers', agents', or employees' (collectively, including Contractor, "Contractor Personnel"); (ii) negligent acts, errors, mistakes or omissions of Contractor Personnel; or (iii) failure of Contractor Personnel to comply with or fulfill the obligations established by this Agreement. Contractor's indemnification, duty to defend and hold harmless City Personnel in this Subsection (a) will apply to all Claims against City Personnel except Claims arising solely from the negligence or intentional acts of City Personnel.
 - b. The City assumes no liability for the actions of Contractor Personnel and will not indemnify or hold Contractor Personnel or any third party harmless for Claims relating to, arising out of or resulting from, in whole or in part, this Agreement or use of Contractor Personnel-provided services or materials.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of services or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If the City reasonably determines any materials or services are of a substandard or unsatisfactory manner, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.

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

26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property and will, at the City's request and expense, furnish to the City reasonable assistance and cooperation in obtaining recovery, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees: (i) it is not entitled to deliver any specific amount of materials or services, or any materials or services at all, under this Agreement; and (ii) the materials or services will be requested by the City on an as needed basis, at the sole discretion of the City. Any document referencing quantities or performance frequencies 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.** Contractor acknowledges the applicability of A.R.S. § 38-504 which prohibits a person who, within the preceding twelve (12) months, is or was a public officer or employee of the City from representing another person (including Contractor) before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment by a substantial and material exercise of administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such person in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risk of loss, injury, or destruction of Contractor's goods or equipment incidental to Contractor providing the services and materials under this Agreement and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage or loss to City real or personal property when such property is the responsibility of or in the custody of Contractor or its personnel.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided, and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the warranty in section 34, Contractor will without limitation and at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense

and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other 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 applicable Purchasing Officer and/or an authorized representative from the using department (collectively "Contractor Administrators"); all questions regarding the Agreement will be referred to the Contract Administrators. If authorized by the Contract Administrators, supplements or amendments may be written to the Agreement for the addition or deletion of services. Payment will be negotiated and determined by the Contract Administrators.
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will, within five (5) calendar days of the unforeseeable circumstance, notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will 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 sent via personally delivery, certified or registered mail with postage prepaid, overnight courier, or 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.
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 herein.**
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to A.R.S §§ 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As this Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes if applicable.
47. **AUTHORITY.** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each is properly authorized and empowered to enter into the Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
48. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** By entering into this Agreement, the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.
49. **PCI DSS COMPLIANCE.** In the event any Contractor engages in payment card transactions as a part of the services provided to the City, Contractor shall comply with the Payment Card Industry Data Security Standards (“PCI DSS”) and any amendments or restatements of the PCI DSS during the Term of this Agreement. Contractor accepts responsibility for the security of the City’s and/or any customer’s credit card data in its possession, even if all or a portion of the services to City are subcontracted to third parties.

EXHIBIT D
REVERSE AUCTION PROCEDURES AND BIDDER TERMS AND CONDITIONS

REVERSE AUCTION PROCEDURES

1. EASiBuy will provide written notice to each bidder through email regarding the bidder's inclusion or exclusion from the qualified bidders list. This will be the official invitation to participate in the Reverse Auction.

INVITATION

1. EASiBuy will work with the bidder to prepare for the auction event. Preparation may include, but is not limited to: testing of the bidder interface, review and discussion of Online Reverse Auction event procedures and other documentation, and training.
2. During the Online Reverse Auction event, only those bidders on the qualified bidders list will be allowed to participate in the auction event. EASiBuy will provide the necessary administrative support to ensure that the integrity of the auction event is not compromised.
3. EASiBuy will keep an event record, which will include the prices offered by the bidders.
4. The EASiBuy bidder interface will be configured such that a bidder will not know the identity of competing bidders.
5. EASiBuy will begin the event through electronic notification to all qualified bidders. Bidders may submit multiple prices during the event.
6. Bids must be submitted by, or under the direction of, an authorized representative of the bidder as designated in the qualifications summary.
7. The auction event will have a scheduled stop time. The event may be extended if bids are received within a predetermined amount of time prior to the scheduled stop time. Specific procedures on time extension will be contained in the event procedures that will be reviewed and discussed with all qualified bidders.
8. The event will conclude at either the scheduled stop time or at the time at which all extensions are completed, whichever is later.
9. After the conclusion of the auction event, the City may consider further negotiations with the most advantageous proposer. If the City is unable to come to an agreement with the most advantageous proposer then the City reserves the right to award to the next most advantageous proposer.

REVERSE AUCTION TRANSACTION FEE

The design, maintenance and operation of the Solution requires substantial costs and investment by EASiBuy. Thus, a Fee based on the total final purchase price stated upon award will be charged to the awarded Supplier. The Fee for specific products and services for each Online Bid shall be owed by Supplier upon the execution of each awarded sale resulting from Supplier's submission of any request for quotations through this Solution. Supplier hereby acknowledges that once you have viewed or received a request for quotation through or as a result of the Solution, and submitted an initial quotation of which a sale has ultimately been consummated as a result thereof, whether or not consummated through the Solution or other forms of bids or negotiations, Supplier is obligated to pay the Fee to EASiBuy if as the awarded Supplier. Said Fee will be assessed to the awarded Supplier as follows:

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Awarded Supplier Reporting and Payment Terms and Conditions:

The awarded Supplier will be responsible to pay the Transaction Fee of one (\$0.01) cent per gallon to EASiBuy for all payments awarded supplier receives from Buyer, any of Buyer's political subdivisions, or any other entity (the "Buying Agent") resulting from this bidding event or subsequent contract.

Per bid - The terms of this Transaction Fee are associated with this specific procurement, and any subsequent contract. If you participate in other procurements with EASiBuy, the terms may be different.

Per term – The terms of this Transaction Fee renews with each subsequent contract term. Any restrictions, stipulations, or fee caps are limited to a specific contract term. When a contract renews for another term or is extended, these restrictions, stipulations, and / or fee caps reset.

Per entity - Transaction Fees for each eligible Buying Agent utilizing the agreement will be established individually, based on actual accumulated spend against the contract by that Buying Agent

Upon notification of award from the Buyer, the awarded Supplier is required to provide ACH or credit card account payment information ("Preferred Transaction Fee Payment Method") to EASiBuy. EASiBuy will charge the awarded Supplier via the Preferred Transaction Fee Payment Method based on the terms below:

1.) Term Purchases: For Term or ongoing purchases, awarded Supplier is required to enter into the Solution all Buyer's payments received (the "Payment" or "Payments") and details of the items, quantities and prices associated with those Payment(s) received within ten (10) days of the end of each month. If awarded Supplier fails to enter Buyer's payment information by the 10th of the month EASiBuy will charge to Supplier's Preferred Transaction Fee Payment Method an amount equal to one month of the overall contract value estimated by the Buyer times the Fee percentage. The Fee will be charged to your Preferred Transaction Fee Payment Method on the fifteenth of each month.

2.) Audit Right: The Buyer and EASiBuy reserve the right to audit the accuracy of the Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business day's prior written notice, and in such a manner as not to unreasonably interfere with the awarded Supplier's normal business activities. Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Fees are determined to have been underpaid by more than five percent (5%) for the period audited, awarded Supplier shall pay for the costs of such audit.

ACCEPTED AND AGREED TO:

Company Name: Western States Petroleum

Signature: 

Printed Name: Charles Yerkes

Title: Sales Manager

Date: May 24, 2021