



City of Phoenix

REQUEST FOR PROPOSAL  
RFP 25-SW-015  
COMPOST FACILITY OPERATIONS AND PRODUCTS  
MARKETING

City of Phoenix  
Public Works  
200 W Washington St  
7th Floor  
Phoenix, AZ  
85003

RELEASE DATE: May 8, 2024  
DEADLINE FOR QUESTIONS: June 5, 2024  
RESPONSE DEADLINE: July 10, 2024, 11:00 am



City of Phoenix  
REQUEST FOR PROPOSAL  
RFP 25-SW-015  
Compost Facility Operations and Products Marketing

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Attachments:

A - Pricing Sheet

B - Cost and Payments

C - REFERENCES

D - 24 Hour Emergency Contact Notices and Contacts

E - Offer

F - Acceptance

G - Conflicts of Interest

H - Resource Innovation Campus Diagrams

I - As-Builts

J - Mobile Equipment updated Spring 2024

K - Stationary Equipment

L - Site Visit Map

M - Plan of Operation City of Phoenix Compost Facility Rev 2018 January 18

N - CompDACS Controls Guide 27th Ave Compost Facility 2.5

# 1. Introduction

## 1.1. Summary

The City of Phoenix invites sealed offers for the 27th Avenue Compost Facility Operations and Products Marketing for a contract term of seven (7) years, with three (3) optional one (1) year extensions for a total of ten (10) years. The contract will be for the operation of the 27th Avenue Compost Facility and marketing of the finished compost. An alternative contract term may be negotiated if the Contractor invests capital improvements to the facility.

## 1.2. Contact Information

**Project Contact:**

**Sean Wulfekule**

Contracts Specialist II \*Lead

200 W Washington St

7th Floor

Phoenix, AZ 85003

Email: [sean.wulfekuhle@phoenix.gov](mailto:sean.wulfekuhle@phoenix.gov)

Phone: [\(602\) 534-0095](tel:(602)534-0095)

**Procurement Contact:**

**Sean Wulfekule**

Contracts Specialist II \*Lead

200 W Washington St

7th Floor

Phoenix, AZ 85003

Email: [sean.wulfekuhle@phoenix.gov](mailto:sean.wulfekuhle@phoenix.gov)

Phone: [\(602\) 534-0095](tel:(602)534-0095)

**Department:**

Public Works

## 1.3. Timeline

### **Schedule of Events**

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a Pre-Offer Conference or Site Visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Sean Wulfekule) at (602) 534-0095/Voice or 711/TTY, or [sean.wulfekuhle@phoenix.gov](mailto:sean.wulfekuhle@phoenix.gov), no later than two (2) weeks prior to the meeting.

<b>Solicitation Issue Date</b>	May 8, 2024
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<b>Pre-Offer Conference (Non-Mandatory)</b>	May 15, 2024, 9:00am Join the meeting now: <a href="https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTU1ZDBhMzqtNThmOS00NDkwLWEwYzAtNzgyZmU3NDgyN2Zm%40thread.v2/0?context=%7b%22Tid%22%3a%2296b9695c-4f0e-42bd-8adf-ba755760346b%22%2c%22Oid%22%3a%226a42fd8b-ef0e-4ba7-9d5a-a76b0fb490dc%22%7d">https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTU1ZDBhMzqtNThmOS00NDkwLWEwYzAtNzgyZmU3NDgyN2Zm%40thread.v2/0?context=%7b%22Tid%22%3a%2296b9695c-4f0e-42bd-8adf-ba755760346b%22%2c%22Oid%22%3a%226a42fd8b-ef0e-4ba7-9d5a-a76b0fb490dc%22%7d</a>  Meeting ID: 278 634 405 179 Passcode: KXBEQE
<b>Site Visit</b>	May 20, 2024, 8:00am  <a href="#">Agenda</a>  3060 S 27th Ave, Phoenix, AZ 85009
<b>Written Inquiries Due Date</b>	June 5, 2024, 11:00am
<b>Offer Due Date</b>	July 10, 2024, 11:00am

## 2. Instructions

### 2.1. Description – Statement of Need

The City of Phoenix invites sealed offers for operation of the 27th Avenue Compost Facility and marketing of the finished compost for an initial seven-year term commencing on or about March 1, 2025, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

### 2.2. City’s Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

### 2.3. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.
- C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.

- D. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- F. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- G. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

#### 2.4. Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

#### 2.5. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Public Works Department, 200 W. Washington Street, 7th Floor, Phoenix, AZ 85003. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

#### 2.6. Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Offer.

## 2.7. Inquiries

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after city council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

## 2.8. Addenda

The City will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

## 2.9. Business in Arizona

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with the City.

## 2.10. Licenses

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

## 2.11. Certifications

By signature in the Offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the Offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

## 2.12. Submission of Offer

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department's clock.



The City of Phoenix Public Works Department is accepting electronic Offers for this solicitation, in addition to other methods of submitting sealed Offer packages (hardcopy). Offerors are responsible for submitting the Offer (electronic or hardcopy) before the due date and time of the solicitation deadline.

The Offeror is responsible for managing potential delays due to delays caused by the Carrier or technical difficulties.

**For Electronic Submittal:** Please submit your response via email to [pwd.solicitations@phoenix.gov](mailto:pwd.solicitations@phoenix.gov). The date and time on the email will provide proof of submission and verification if the Offer was received on or prior to the due date and time specified. **Please identify the solicitation number and title in the subject line of the email when submitting the Offer.**

The City email file size is limited to 150mb. To send larger files electronically, the upload and receipt time may take longer than expected. It is the responsibility of the Offeror to ensure that the Offer met the due date and time.

**Please DO NOT submit links to Google Docs, Dropbox Paper, or similar services. Your offer may be deemed non-responsive if your offer is supplied utilizing these services.**

**For In-Person and Carrier Delivery:** Offers will be received at City of Phoenix City Hall located at 200 W. Washington St, 1st floor, Atrium, Phoenix, AZ 85003. The Atrium is just beyond the security checkpoint. The drop-off box is a grey bin marked Public Works Department. Delivery must be made during normal business hours (8:00 am – 5:00 pm, local Phoenix time, Monday – Friday) before the solicitation due date and time. Offers must be clearly marked on the outside of the package as designated in the solicitation.

**Delivery of Offers:** If the Offeror submits the Offer in a hardcopy format, then the Offer must be submitted in a sealed package/envelope marked with the following information:

- Offeror's Name
  
- Offeror's Address (as shown on the Certification Page)
  
- Solicitation Number
  
- Solicitation Title
  
- Offer Due Date

## 2.13. Withdrawal of Offer

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

## 2.14. Offer Results

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five business days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

## 2.15. Offer Evaluation Criteria

In accordance with the Administrative Regulation 3.10, Competitive Sealed Proposal awards shall be made to the responsive and responsible Offeror(s) whose Offer is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below.

The evaluation factors are listed in the relative order of importance and details are provided in Evaluation Process (Section 4).

## 2.16. Pre-Award Qualifications

Offeror must have been in operation a minimum of three years. The Offeror's normal business activity during the past three years will have been for providing the goods or services in this solicitation.

Upon notification of an intent to award, the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this agreement. Insurance requirements are non-negotiable.

## 2.17. Certificates of Insurance

Upon notification of a recommended award, the Offeror will have **14 calendar days** to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

## 2.18. Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

- A. Factors that may be considered by the City include:
1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
  2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
  3. Safety record; and,
  4. Offeror history of complaints and termination for convenience or cause.
- B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- C. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

## 2.19. Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all

solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

“To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected, and the solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

## 2.20. Protest Process

Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.

Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City’s website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.

All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

- Identification of the solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and

- The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

## 2.21. Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

## 2.22. Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being a late Offer.

## 2.23. Right to Disqualify

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

## 2.24. Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

**Responsiveness:** Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.

Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

**Responsibility:** To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.

The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

## 2.25. Equal Low Offer

Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.

## 2.26. Evaluation of Competitive Sealed Offers

The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

## 2.27. Detailed Evaluation of Offers and Determination of Competitive Range

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which offers are within the Competitive Range, when appropriate.

## 2.28. Offers Not Within the Competitive Range

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

## 2.29. Discussions with Offerors in the Competitive Range

The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

## 2.30. Best and Final Offers (BAFO)

A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.

If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.

The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.

The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.



### **3. Scope of Work**

#### **3.1. SCOPE OF WORK**

The City of Phoenix Public Works Department 27th Avenue Compost Facility is located at the Resource Innovation Campus, near Lower Buckeye Road and 27th Avenue. The Resource Innovation Campus is one of many initiatives the City is undertaking to achieve its zero waste goal by 2050 and develop a regional circular economy hub. The Resource Innovation Campus includes the 27th Avenue Transfer Station, Materials Recovery Facility, Compost Facility, and land leases for private sector innovators and manufacturers selected through competitive processes.

The 27th Avenue Compost Facility began operations in April 2017 and is designed to process up to 55,000 tons of inbound organics per year. The facility is uncovered, except for the administration and restroom trailers, electrical buildings, and controls room. The facility is designed for positive and negative aeration process using frequent turning, watering, and temperature control to produce a stable and cured compost in 45-60 days.

#### **3.2. Scope of Services**

The Contractor will operate the 26-acre 27th Avenue Compost Facility and market and sell the finished compost products generated. The Contractor will, except as may be otherwise provided herein, furnish all labor, materials, supplies, equipment, maintenance, and supervision necessary, useful, or required to perform the services at the 27th Avenue Compost Facility. The Contractor's obligation will be to operate and maintain the 27th Avenue Compost facility including marketing and selling the compost and landscape products produced. In addition, the City's expectations are to:

- Ensure safe, dependable, professional and environmentally compliant operation of the compost facility.
- Maximize recovery of organics and diversion of material from the waste stream at City of Phoenix solid waste facilities.
- Properly maintain the facility and equipment to protect its operational life.

#### **3.3. Historical Data**

Annual tonnage by customer type since the facility began operations in FY2017-18 are provided below. Monthly inbound yard waste tonnage is seasonal and contingent upon the length and severity of the summer monsoon storms and the spring and fall growing seasons. With the City's aggressive solid waste diversion goals, the City is actively looking to increase diversion of clean green and food waste to the compost facility to approach the 55,000 tons per year design capacity of the facility.

<b>Compost Facility Inbound Tons By Material Type and Outbound Rejects</b>						
<b>FY</b>	<b>Food Scraps</b>	<b>Green</b>	<b>Total Inbound</b>	<b>Rejects</b>	<b>Delta</b>	<b>% Change</b>
FY2017-2018	713	36,885	37,598	(482)	37,116	
FY2018-2019	925	52,824	53,749	(737)	53,012	43%
FY2019-2020	711	45,114	45,825	(970)	44,855	-15%
FY2020-2021	150	36,865	37,015	(467)	36,548	-19%
FY2021-2022	417	42,240	42,657	(219)	42,438	15%
FY2022-2023	1,294	41,582	42,876	(183)	42,693	1%
FY2023-2024	5,249	33,906	39,155	(475)	38,680	-9%
*FY2023-2024 is annualized						

### 3.4. Proposed Price and Revenue

A. From the operational start date, the City will pay the Contractor the service fee for handling, processing green organics into compost and marketing the finished compost during a contract year. The service fee includes all amounts payable to the Contractor for the performance by Contractor of the operation, ordinary and extraordinary maintenance of the facility including periodic replacement of processing equipment and mobile equipment, purchasing supplemental equipment and the performance by the Contractor of all its obligations under this Agreement. All prices should be provided in 2024 dollars and will be adjusted annually for inflation beginning in year two of the Agreement.

B. The City of Phoenix will retain 100% of the revenue for the inbound organics gate fee. The Contractor will propose their revenue share mechanism and per unit or percentage value to the City.

C. The Contractor will, at its sole cost and expense, purchase a food depackager to accept and process more food scraps. When the depackager becomes operational, the City will agree to waive their food scraps gate fee to support the Contractor's efforts to increase inbound food scraps into the facility.

#### D. Monthly Payments

1. The Contractor will submit monthly invoices on or before the 15th day of every month. Each monthly invoice will be accompanied with the reports outlined in Section 3 and free of mathematical error and/or missing supporting documentation. The Contractor will provide all documentation supporting the charges reflected in the monthly invoice. Upon finding an error and/or missing documentation, the City will return the monthly invoice to the Contractor. The Contractor will promptly resubmit the revised monthly invoice to the City. Each revised invoice will document the date that the revised invoice was submitted to the City. Failure of the City to identify an error does not waive any of the City's rights. City payments on an invoice to the Contractor will be made within 45 days of the City's approval of that invoice.

2. The City may refuse to make any payment (in whole or part) identified in this section if the Contractor fails to make acceptable submittals in accordance with this Agreement.

3. Revenue share must be in a separate billing from the processing fee invoices. Payments will be made on a monthly basis in the form of a check and not a credit to other billings. Payments will be made within 30 days of receipt of a monthly invoice from the City. The contractor will pay interest to the City on any revenues not paid on time at the rate of 5% per annum.

**E. Inflation Factor**

1. During the term of this Agreement and any extensions, the processing fees identified in Attachment A, Pricing Sheet, will be adjusted annually for inflation beginning in year two of the agreement. Adjustments for inflation will be limited to the percentage change in the Consumer Price Index (CPI), for the previous contract year, or 3%, whichever is less. For the purposes of this Agreement, CPI is defined as the Western Region Consumer Price Index for Statistics, United States Department of Labor. The change in CPI, will be calculated in November 2025 for the previous twelve-month period compared to the twelve-month period immediately preceding and will be effective as of January 1, 2026. The change in CPI will be calculated each subsequent November and will be in effect for billings from January through the following December.

2. The City will obtain the inflation factor based on information published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS)

<b>CPI for All Urban Consumers (CPI-U)</b>	
<b>Series ID:</b>	CUURS400SA0
<b>Series Title:</b>	All Items in West Urban, All Urban Consumers, Not Seasonally Adjusted
<b>Area:</b>	West
<b>Source:</b>	<a href="https://data.bls.gov/cgi-bin/srgate">https://data.bls.gov/cgi-bin/srgate</a>

3. The following example illustrates calculation of the change factor for a twelve-month period ending February 2024:

<b>CPI (CUURS400SA0)</b>	
February, 2024	339.135
Less CPI February 2023	328.569
Change in CPI	10.566
Divided by Previous CPI	0.03
Multiply by 100 = percent change	3.22

The fee for each ton would then be multiplied by 3% to calculate the adjustment which will be added to the prices. These CPI adjustments may go up or down.

4. In the event that BLS ceases publication of Series CUURS400SA0, the City and the Contractor will determine the agreeable inflation index that most closely approximates the Western Region CPI for the remainder of the Agreement Term.

### 3.5. General Operations Requirements

A. The Contractor will pre-screen, manage and process up to 4,600 tons of organics per month from the City as material is made available and accept 100% of the organic materials delivered to the Compost Facility from the City.

B. The Contractor's rejected loads must not exceed 10% by the weight of the total material delivered to the facility each month unless the City exceeds the allowable 5% contamination. This contamination measurement is subjective and will be mutually determined by the parties. Contamination is defined as small animal waste, logs, painted or treated wood, large tree stumps and solid waste.

C. The Contractor will accept all loads from the City at the Grade A processing fee in Attachment A of which at least 95% of the load contains the acceptable feedstocks defined in this agreement.

D. The Contractor can reject any load above 5% contamination and will document and communicate the rejection and reason to the City. The Contractor will redirect the rejected load to an agreed upon location with the City. The City can elect to either clean the load, pay the Grade B processing fee defined in Attachment A, or concur with the rejection of the load to the landfill.

E. Acceptable feedstocks for the compost facility include:

1. Branches, limbs, and stumps from trees and/or cactus that do not exceed the length and diameter authorized in the most current version of Chapter 27 of the City Code
2. Flowers, plants and shrubs
3. Grass clippings and leaves
4. Tree fruit and garden waste
5. Undecorated Christmas and holiday trees, lumber, sawdust, wood chips and wood waste (untreated/unpainted) and pallets
6. Large animal (Herbivore) manure and bedding
7. Clean construction and demolition wood
8. Food scraps including vegetables, fruits, proteins, dairy, bread, eggshells, grains, beans, coffee grounds, tea bags and cereal.
9. Food soiled compostable paper including paper plates, paper towels, napkins and greasy pizza boxes.

10. Compost Manufacturing Alliance or Biodegradable Plastics Institute approved compostable products and packaging.

F. At its option, the City may require additional processing or composting of materials such as biosolids from Municipal Wastewater Treatment Plants, biochar from pyrolysis, and/or digestates from anaerobic digestion as an additional service and additional fees under this Agreement. The City may or may not choose to exercise this option depending on cost or availability of the feedstocks to the City and if it is in the City's best interest to exercise this option.

G. The Contractor must control tracked-out material onto the paved section of the 27th Avenue Transfer Station internal roads adjacent to the Compost Facility as highlighted in Attachments H and I, and will maintain these roads debris-free at least two (2) times per day, once in the morning and once in the afternoon, to remove any tracked-out material, such as gravel, or debris.

H. The Contractor must maintain the Compost Facility in an orderly manner to facilitate smooth traffic flow and clean well-graded dumping, screening and sales surfaces free of debris, ruts and obstructions.

I. The Contractor's vehicles and equipment must enter and exit the area specified for this operation utilizing the 27th Avenue Transfer Station's existing roads and scales.

J. At no time will the landscape products removed from the Compost Facility be landfilled, used for landfill cover, or alternative daily cover (ADC) without the expressed written permission of the City. The Contractor will, in the Marketing Plan, identify how they will be using and marketing the landscape products processed at the Compost Facility.

K. The Contractor must have a functional water truck, with a minimum of 4,000 gallons capacity, having front and rear spray capabilities, and an overhead cannon on site at all times for fire control and dust control purposes. The truck must be filled with water at all times and immediately refilled upon depletion.

L. All loaded vehicles leaving the Site must be covered to prevent material spillage and blowing.

### 3.6. Operations Plan

A. The Contractor will prepare an Operations and Maintenance Plan (OMP) for the Compost Facility that will be submitted to the City for review and approval at least one month prior to the scheduled start-up of the operation. The Contractor will not begin operations until they receive written approval from the City. Should the Contractor wish to make any changes in the OMP, the Contractor will submit a revised OMP in writing to the City a minimum of two (2) weeks prior to the requested effective date for such revisions. The City will accept or decline the revisions within two (2) weeks of receiving the revised OMP. The OMP, at a minimum, will contain contingencies for the following:

1. Fire Mitigation
2. Emergency actions and notifications
3. Dust control

4. Noise control
5. Debris and trash control
6. Contamination control
7. Odor control
8. Stormwater pollution prevention
9. Safety and Training Plan
10. Receiving area and customer management
11. Feedstock preparation
12. Grinding and mixing
13. Composting and turning
14. Water and temperature management
15. Aeration control
16. Curing and turning
17. Screening, stockpiling and product loadout
18. Biofilter management
19. Pond management and reapplication of process water
20. Process to further reduce pathogens
21. Equipment and facility maintenance

B. The purpose of the OMP is to provide the overall background, data and guidance necessary for proper facility operation and maintenance. This document will be in addition to and supplement the provisions of the manufacturer's operation and maintenance manuals that will be supplied by the City at least 60 days prior to the start of operations for all of the stationary and mobile equipment and facility components.

C. The OMP will incorporate the turned aerated pile design and technology of the facility including the reversing negative and positive aeration capabilities.

D. Attachment I includes a partial set of as-built drawings to show the design and technology of the compost facility. The City will provide the complete set of as-builts and all supporting documentation to the Contractor upon contract award.

E. Attachments M and N are the Operations Manual and Controls Guide provided by the firm that designed the facility at the start of operations. These documents may not reflect all of the current operating conditions as the operations have evolved over time as operational experience has grown. The documents are provided as reference only and should not be provided verbatim in the proposal and OMP. The City requests proposals and an OMP that focuses on the proposer's approach to optimally operate and maintain the facility given their experience and the information provided in this RFP.

#### **F. Air Quality Permit and Dust Control Plan**

1. A Dust Control Plan must be included in the OMP, as discussed in the Scope of Work.
2. The Contractor is responsible for managing and maintaining the Compost Facility operations to comply with all federal, state, county and city laws and regulations. The Contractor must also be prepared to spend as much time as required to keep dust and emissions controlled in accordance with all regulatory requirements. Chemical dust suppression will not be used without prior authorization of the Contract Monitor or Designee.
3. The Contractor must apply for an air quality permit with Maricopa County and submit a copy of the application to the City for the Compost Facility within 60 days prior to the start of operations. The Contractor must update the permit with any changes in the quantity and/or type of equipment onsite and/or changes in operations. At the termination of the contract, the Contractor must transfer the Air Quality Permit back to the City through the process and timeline directed by Maricopa County.

#### **G. Odor Control Plan**

1. The Contractor acknowledges that its odor control obligations constitute an essential element of the consideration of the City's execution of this Agreement and that failure to meet the standards set forth in this section and the OMP will constitute a material breach hereof. The Contractor will comply with all odor mitigation actions in the compost facility operations and maintenance plan. The Contractor will maintain a written record of all facility odor complaints made by any person and will report all such complaints immediately to the City. Odor complaints received by the City will be confirmed by the Contract Monitor or Designee and reported to the Contractor and will be addressed pursuant to subsection b below. Complaints confirmed in good faith by the Contract Monitor will constitute a "verified odor complaint" and will be addressed pursuant to subsection 2 below. The City will conduct periodic site inspections to confirm the Contractor's compliance with all odor mitigation actions in the Compost Facility OMP.
2. If a verified odor complaint is received, the Contractor will fill out the odor complaint form. The Contractor will immediately conduct a survey of the site to determine the odor source. The Contractor will notify the Contract Monitor or Designee who will accompany the Contractor during such survey. If the odor source cannot be identified, the Contractor will so report to the City within one business day of conducting the survey. If the facility is the source, the Contractor will submit to the City a corrective action plan and schedule for actions. If it is determined that the Contractor has followed the OMP as agreed upon by the Contractor and the City, then the contractor will update the OMP as described in Section 3.6A for approval by the City. If it is determined that the Contractor has failed to operate the facility based upon the OMP, the City will give notice to the Contractor. Three or more occurrences within an Agreement year where the Contractor fails to follow odor mitigation actions in the OMP and corrective action plans will be considered a material breach by the Contractor.

#### **H. Stormwater Pollution Prevention**

1. Stormwater discharges at the Site are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants, AZPDES permits are required for stormwater discharges.
2. The 27th Avenue Compost Facility contains a lined pond that captures the water from the composting process for evaporation or reapplication. The City obtained an Aquifer Protection Permit Type 3.01 General Permit for the pond. The City requires the Contractor to obtain the No Discharge Certificate with the Arizona Department of Environmental Quality and renew at the required intervals. The Contractor will provide a copy of the certificate to the City. It is also critical that the pond is periodically inspected and maintained to ensure optimal performance and to prevent any damage to the liner.
3. The Contractor will maintain all storm drains across the facility and the storm water pond including the weir regularly to ensure they work optimally and do not provide an odor source.

#### **I. Noise Control**

1. The Contractor's vehicles and equipment will be maintained and operated in such a way as to minimize noise to the greatest degree practicable. Noise levels must conform to the latest OSHA standards and in no case will noise levels be permitted which interfere with the work of the City or others at the site.

### **3.7. Safety and Security**

A. The Contractor is responsible for the maintenance and safety of the Compost Facility. The Contractor will provide the City with fire and safety plans to meet Federal/State/City regulations, fire codes and safety codes. This includes plans for the prevention of fires, plans in the event of a fire, and plans for clean up in the event of a fire.

B. The Contractor acknowledges that fire mitigation constitutes an essential element of the consideration of the City's execution of this Agreement and that failure to meet the standards set forth in this section and the OMP may constitute a material breach hereof. The Contractor will comply with all fire mitigation actions in the Compost Facility OMP. The Contractor will maintain a written record of all facility "fire incidents" or "no fire aesthetics incidents (i.e., steam)", including actual fire alarm/emergency, smoldering, hotspots and steam reports made by any person and will report all such incidents immediately to the City. Fire Alarm/Emergencies responded to by the fire department (or other first responder) will be immediately reported to the Contract Monitor or Designee. "Non-Alarm/Emergency Fire Incidents" received by the City will be documented and reported to the Contractor. "Non-Alarm/Emergency Fire Incidents" confirmed in good faith by the Contract Monitor and Contractor will constitute a "verified fire incident" and will be addressed pursuant to subsection 1 below. "Non-Alarm/Emergency Fire Incidents" confirmed in good faith by the contractor will be reported to the Contract Monitor and will constitute a "verified fire incident" addressed pursuant to subsection 1 below. The City will conduct periodic site inspections to confirm the Contractor's compliance with all fire mitigation actions in OMP.



1. If a “verified fire incident” occurs, the Contractor will fill out the incident form and submit to the Contract Monitor within 24 hours. The Contractor and Contract Monitor will immediately conduct a survey of the site to determine the fire source. If the fire source cannot be identified, Contractor will so report to the City within one business day of conducting the survey. If the fire source is identified, Contractor will take corrective action to eliminate the fire. Upon termination of the incident the contractor will submit to the City a report addressing the incident. If it is determined that the contractor has followed the OMP as agreed upon by the Contractor and the City, then the City, in cooperation with the Contractor, will take corrective action to modify the OMP.
  2. If it is determined that the Contractor has failed to operate the facility based upon the OMP, then the City will give notice to the Contractor. Upon notice to the Contractor, Contractor will provide a corrective action plan to remedy the situation within 72 hours. The corrective action plan will then be added to the OMP for the facility. Three or more occurrences within an Agreement year where the Contractor fails to follow fire mitigation actions in the OMP and corrective action plans will be considered a material breach by the Contractor.
  3. In the event of a fire incident the Contractor will implement the Fire Emergency Plan (FEP) as approved by the City and execute the Fire Clean-up Plan (FCP) as approved by the City.
  4. Additionally, the Contractor will be responsible for costs to replace or repair any City property damaged by the fire and any costs incurred by the City in responding to the fire.
- C. The Contractor will be responsible for following all traffic patterns and safety procedures as consistent with the City’s 27th Avenue Transfer Station. This includes strictly adhering to all procedures identifying use of Personal Protective Equipment (PPE), observing hard hat areas, wearing certified safety shoes, uniforms, etc. The Contractor will require their staff to wear uniforms that distinguish themselves from City staff.
- D. The Contractor is responsible for providing parking, potable water, cell phones, 2-way radios and any other amenities deemed necessary by the Contractor for employees working in the Compost Facility.
- E. The Contractor will be responsible for any dumped or spilled organic feedstocks, compost or mulch materials that may occur during the course of performing these contract services regardless of whether the materials are dumped or spilled due to the fault of Contractor. This includes any materials spilled on the site or roadways. Any such dumped or spilled materials will be cleaned up promptly by the Contractor at its sole expense. If the City must clean up dumped or spilled organic feedstocks, compost or mulch materials, Contractor will be invoiced for the cost of the clean-up, unless a City vehicle is responsible for the illegally dumped or spilled material.
- F. The Contractor will develop and implement a site safety plan and ensure staff and customers are conducting themselves in a safe manner while onsite. The Contractor is responsible for providing and replacing all directional and safety signage for the site as needed.
- G. The Contractor must immediately report accidents that occur on City premises to the Police and/or Fire Department and the Contract Monitor or Designee. The Contractor will provide a

written report of the accident to the City within 48 hours of the accident. The report must clearly identify the details of the accident, the factors contributing to the accident and any actions implemented to prevent similar accidents in the future.

H. The Contractor will provide security and be responsible for all processing equipment and mobile equipment, administration and restroom trailers, portable toilets, spare parts, tools other miscellaneous equipment and office furniture and equipment including the implementation of procedures to prevent theft, vandalism or other types of loss.

### 3.8. Qualifications and Experience

#### A. **Staffing**

1. The Contractor will, at its sole cost and expense, staff the facility with a sufficient number of hourly and salaried employees as is consistent with good management practices and in sufficient numbers to enable Contractor to perform all of its obligations and duties under this Agreement in a timely and efficient manner.
2. The Contractor will designate emergency contact personnel who will be accessible by the City at all times.
3. The Contractor will employ trained maintenance mechanics on a full-time basis to perform the required equipment maintenance.
4. No later than four weeks prior to the facility operational date and thereafter through the term of this Agreement, the Contractor will have a local facility manager charged with the responsibility for supervision of the operations of the facility and sale of the finished compost and will at all such times maintain an office in the facility. The facility manager will perform the obligations as specified in this Agreement as their sole responsibility and will have no other responsibilities to any other facility or location. During the term of this Agreement, if the facility manager is unavailable for any reason, the Contractor will designate individual(s) acceptable to the City who will be responsible for facility operations, thus ensuring that a responsible party is designated at all times. The facility manager will preferably have a minimum of two years of experience managing a large-scale compost processing facility.
5. The Contractor will maintain a current list of all employees working at the Compost Facility including any applicable licenses and certifications they have for review by the City as requested. The Contractor will report any staffing changes to the City no less than monthly.

#### B. **Safety Plan and Training**

1. The Contractor will develop, implement and maintain a formal safety and training program for all employees, including but not limited to, best industry standards and practices, applicable laws, latest version of the approved operations and maintenance plan for the facility, safety, emergency actions and notifications, odor control, equipment operation and maintenance, customer service and environmental compliance.
2. The Contractor will prepare and submit to the City a written Training and Safety Plan within thirty days of the effective date of this Agreement. Following a review period, the City will provide comments to the Contractor on the Training and Safety Plan. Upon

receipt of the City's comments, the Contractor will have fourteen days to submit to the City a final Training and Safety Plan. The Contractor will work with the City to ensure that the final Training and Safety Plan is accepted by the City prior to the facility operational date. Training of personnel will not commence until notice of acceptance is provided to the Contractor. Notwithstanding acceptance by the City, the Contractor will be liable and responsible for ensuring that the Training and Safety Plan meets the requirements of all laws and regulations. The Training and Safety Plan will consist of both classroom-type and hands-on operator training and will demonstrate processing equipment and mobile equipment and instruction in a classroom environment located at the facility. The instruction will include instruction by qualified manufacturer's representatives who are knowledgeable about the facility and equipment. The Training and Safety Plan will identify the contents, duration, goals, and specific agendas of the training to be provided for operations, mechanical maintenance, electrical and instrumentation maintenance personnel. Experienced Contractor mechanics will thoroughly train all maintenance personnel to be employed at the facility with written supplementary materials provided. In addition, through the Contractor's network of peripheral processing equipment suppliers, maintenance personnel will receive specialized training on major pieces of processing equipment.

3. The Training and Safety Plan will be reviewed by the Contractor at intervals not exceeding six months and will be revised as necessary by the Contractor with acceptance by the City.
4. Copies of the initial and updated Training and Safety Plan will be provided to the City and one bound copy will always be maintained by the Contractor on-site at the facility.
5. The Contractor will maintain records documenting the training received by each employee.

### 3.9. Damage and Accident Prevention

A. The Contractor will (i) take all reasonable precautions to prevent damage, injury or loss, by reason of or related to the operation and maintenance of the facility, to any property on the site or facility or adjacent thereto, including but not necessarily limited to trees, shrubs, lawns, walks, pavements, roadways, equipment, structures and utilities; (ii) establish, maintain and enforce safety procedures and safeguards for the protection of the Contractor personnel and all other persons at the facility consistent with applicable laws, customary industry standards; OSHA requirements, and the City's Site rules as may be in effect; (iii) comply with the City's Site rules as may be in effect from time to time and with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to the safety of persons or property at the facility or their protection at the facility from damage, injury, or loss; and (iv) designate a qualified and responsible member of its organization stationed at the facility who will be responsible for facility safety and the prevention of fires and accidents at the facility and who will work with federal, state, local and City officials involved with matters of safety.

B. The Contractor will notify the City immediately of any damage, injury, or loss, or of any situation posing a threat or harm to the facility or Transfer Station employees, equipment or structures.

C. At the City's request, the Contractor will meet with the City's representatives to discuss operating and safety rules and regulations in effect at the facility and site.

D. Sorting personnel will be properly clothed in protective gear while in the performance of their duties. Such protective gear will include, at a minimum, gloves, eye protection, ear protection, and suitable pants and shoes.

E. The Contractor's equipment operators will wear appropriate protective gear and a safety vest to provide visibility to incoming drivers while performing such duties.

F. If the Contractor's personnel are negligent or inattentive, and such negligence or inattentiveness results in damage to City equipment or the facility or Transfer Station or results in injury to personnel, Contractor will be liable for any such damage or injury.

### 3.10. Employee Conduct

A. The Contractor will not permit any person to perform work who is incompetent or disorderly, and who may create hazardous or unsafe conditions or who may otherwise adversely affect the quality or the performance of the work. The Contractor employees will conduct themselves at all times in a professional manner and in accordance and consistent with the City's rules and regulations while performing their duties.

B. The Contractor will require and provide uniforms for its employees in a different color than the City's uniforms that readily identify such employees as employees of Contractor and that meet OSHA standards. The Contractor's office and management personnel will either wear a uniform in a different color than the City's uniforms or a badge that identifies them as Contractor employees.

C. The Contractor will ensure that no employee consuming alcohol or drugs, or under the influence of alcohol or drugs, is allowed to participate in the performance of the work required under this Agreement, nor will any employee be allowed to bring alcohol, drugs or firearms onto the site.

### 3.11. Permits and Licenses

The Contractor will comply with all existing and subsequently enacted federal, state and local laws, permits, ordinances, codes and regulations that are or become applicable to this Agreement including all associated costs. Copies of all required permits, licenses, authorizations and approval will be submitted to the City prior to the initiation of this Agreement and the Contractor will show proof of such at the City's request any time during the Term of this Agreement. It is the Contractor's responsibility to respond to any violations or fines that may be incurred by the Contractor and to cure these violations and pay all applicable fines and fees to the satisfaction of the jurisdiction issuing the violation or fine and/or to City's deadline.

### 3.12. Hours of Operations, Scales, and Scale Outages

A. The City will divert customers entering the Transfer Station with loads containing acceptable materials to the Compost Facility.

B. The City will weigh incoming loads and charge customer tip fees for disposal and/or diversion to composting operations. The Contractor will not charge customers for tipped loads unless otherwise agreed upon by the City with an executed amendment.

- C. The Contractor can reject loads with excessive contaminants (greater than 5% by weight). The Contractor will redirect rejected loads to areas agreed upon with the City. The City can elect to clean the load or pay the Grade B processing fee as stated in Attachment A.
- D. All inbound feedstock loads must go across the 27th Avenue Transfer Station scales and be charged applicable tip fees. Scale House tip fees may be waived for inbound admixture materials with prior written approval by the City.
- E. The City may provide use of the 27th Avenue Transfer Station outbound scales for Contractor to weigh outbound finished compost product leaving the Transfer Station.
- F. The City will service the Contractor provided roll-off containers for garbage and trash, at no charge and at a frequency determined by Contractor and the on-site City representative.
- G. The City will weigh all incoming organic loads at the scale house. Organic loads identified at the scale house as contaminated or containing excessive trash will not be directed to Contractor.
- H. The City's scales are currently in operation from 5:30 a.m. through 5:00 p.m. Monday through Friday, and 6:00 a.m. through 3:00 p.m. Saturdays, and are closed on Sundays and all City holidays. The scale hours and designated City holidays are subject to change. Contractor's operations at the Compost Facility must accommodate City customers during the hours of operations listed in this Section, unless the Contractor receives written approval from the City for alternative hours of operation.
- I. The City's existing scales are operated by the City for weighing inbound and outbound loads. The City will use its best efforts to ensure that the scales are accurate and in accordance with State requirements and operational during the hours of operations as specified.
- J. In the event the City's scales become temporarily inoperable due to testing, maintenance, or malfunction, the City will estimate the weight of loads entering the 27th Avenue Transfer Station on the basis of vehicle volume and historical data obtained from past operations.

### 3.13. Utilities

- A. The Contractor will be responsible for the domestic water and electrical utility cost at their sole cost and expense. The City will provide past utility costs to Contractor for reference and planning purposes.
- B. The City installed all initial utility infrastructure for information technology and telecommunications and data to support the Compost Facility. The Contractor, at its sole cost and expense, will be responsible for coordinating service start-ups and ongoing service charges for these utilities.
- C. The City installed a shallow water well and pump located west of the compost facility that provides water to the active composting areas of the facility. For redundancy, all access points at the facility for well water have adjacent domestic water sources. The Contractor is responsible for weekly, monthly, quarterly and annual inspections, sounding, and maintenance of the well site while the Contractor is the exclusive user of the water. The Contractor will provide all maintenance records to the City in the monthly reports and upon request. If the City grants access to the well water to any other tenant(s) of the Resource Innovation Campus, City will negotiate terms with the Contractor for the joint use and maintenance of the site.

### 3.14. City and Contractor Provided Equipment

A. For the purposes of this Agreement heavy duty vehicles, off-road equipment, stationary or specialized equipment will be defined as Equipment.

B. Prior to the start of operations, the Contractor will provide the City with their Equipment Maintenance Plan to implement the provisions outlined in the following sections of this agreement including training and qualifications of equipment operation and maintenance staff, identified contracted equipment service providers, and operation and maintenance approach.

C. The City is entrusting the Contractor with various specialized stationary equipment identified in Attachments J and K that encompass the Compost Facility design and operation. The City will retain ownership of the equipment until its retirement. The Contractor will accept the "as-is" condition of this equipment for operation and is responsible for any replacements or upgrades to this equipment.

D. Notwithstanding the City provided stationary equipment, the Contractor will provide, whether by purchasing, leasing, contracting or other means, all necessary equipment required to process material delivered by the City into marketable landscape products by chipping, grinding, composting, screening or other means as described in this contract and the OMP.

E. To maintain continuity of operations, the City will provide the mobile compost equipment listed in Attachment J for the Contractor's temporary use at contractor's sole cost and expense for up to 12 months from the contract effective date. Thirty days prior to the start of operations, Contractor will confirm with the City what mobile equipment listed in Attachment J Contractor desires to use for operations for up to 12 months.

F. If the Contractor desires to purchase from the City any of the mobile equipment listed in Attachment J, the Contractor will communicate this intent 30 days prior to the start of operations. The City will coordinate third party appraisals of the equipment to determine the purchase price. The Contractor will confirm intent and proposed purchase method in writing to the City no later than two weeks after receiving the appraisal results from the City. The proposed purchase methods may include cash purchase, third party auction or a negotiated payment or lease plan. Upon City approval of the purchase method, the City will coordinate the terms, financial transaction and physical transfer of the equipment with the Contractor.

G. The Contractor will use the City's equipment solely for the approved purposes as defined under this Agreement.

H. The Contractor will be responsible for all equipment maintenance and repair. The Contractor must provide for adequate redundancy in cases of downtime or scheduled maintenance so that grinding and required throughput is maintained during the operational hours set forth in this Agreement.

I. The Contractor will supply all lubricants, fluids, wear items and associated tools necessary to maintain all equipment. The Contractor must maintain material safety data sheets for all chemicals used on site and will forward a copy to the City. The Contractor will store, use, and recycle/dispose of chemicals, fluids, and lubricants in a safe manner and as required by applicable laws and regulations, including those enforced by the Arizona Department of Environmental Quality. Used lubricants and fluids will not be stored onsite for longer than 30 days. No maintenance, including fluid changes, can be performed on dirt surfaces.

J. The Contractor will comply with all federal, state and local regulations regarding spill prevention, oil and fuel control, and clean-up.

K. The Contractor is responsible for emissions compliance with Arizona State Emissions Law and all associated costs.

L. The Contractor will provide, at its sole cost and expense, an equipment maintenance information system or a management software program for tracking maintenance records and inventory. Contractor will provide maintenance records to the City at its request. The Contractor will provide read only access to the equipment maintenance software program if requested by City staff. The City and Contractor will agree on the number of staff approved for access.

M. The Contractor will provide all containers, including roll-offs and tipplers, for sorting and processing including collection of any solid waste at the facility. The City will coordinate with the Contractor to service the containers at agreed upon intervals. The City will not charge the Contractor for servicing the containers.

### 3.15. Equipment Transition

A. Prior to the start of operations, the City will provide the equipment maintenance records and give access to the facility and equipment for the Contractor to conduct inspections.

B. The Contractor will assume responsibility for and insure the equipment by the scheduled Agreement start date.

C. Upon returning any equipment to the City for any reason, the Contractor will ensure each piece of equipment is in the same operating condition and appearance as they were when received, subject to reasonable wear and tear based on operational hours, mileage and age or unless otherwise authorized in writing by the City. The Contractor may be invoiced for damages to the equipment.

D. The City reserves the right to access the Compost Facility and City owned equipment over the course of the Agreement and will communicate with Contractor when access is needed. In its sole discretion, the City will have authority, upon inspection, to take out of service any City-owned equipment for any safety violation until corrective action or repairs are completed to ensure the equipment is safe to return to service. Such action does not relieve the Contractor of the duty to provide service under the terms of the Agreement.

### 3.16. Equipment Condition and Maintenance

A. The Contractor will ensure supervision during all work shifts to ensure that its maintenance technicians, equipment operators and facility workers maintain equipment and the facility in compliance with required specifications.

B. The Contractor will be responsible for all maintenance and will maintain records for the same. Maintenance will be performed to OEM standards, OMP, and Contractor's Vehicle/Equipment Maintenance Plan as annually submitted by the Contractor to the City and approved by the City.

C. The Contractor will perform all routine preventive maintenance, heavy repair, running repairs, and major and minor cleaning necessary to keep City-provided equipment and Contractor-provided equipment in a safe, reliable and well-maintained condition, and the Contractor will ensure that all on-board systems are fully functional and operational.

D. The Contractor, at its sole cost, will maintain the vehicle/equipment, including tires and all wear parts, in the same operating condition and appearance in which the equipment is received, subject to reasonable wear and tear based on mileage/hours and age and without any cost to the City. Replacement tires and wear parts are to be OEM quality or a grade better and will be provided by the Contractor.

E. The Contractor will be fully responsible, without exception, for ensuring that equipment is safe for operation prior to being placed into service.

F. Preventive Maintenance Service (PMS) intervals will occur at the OEM recommended intervals and will include a review of equipment overall safety to ensure proper operation of all equipment being returned to service. Such inspections will be documented and tracked by the Contractor and randomly audited by the City. PMS will not occur beyond 10% from the OEM required interval.

G. PMS should be performed based upon mile or hour intervals first and time intervals as the last interval for recommended service unless otherwise recommended by the OEM specifications. The Contractor will track and record these inspections.

H. Equipment interiors and exteriors must be cleaned to maintain the equipment in a clean, dust free, and professional appearance no less than a weekly basis. Interiors must be wiped down to achieve cleanliness of the entire equipment interior.

### 3.17. Equipment Fueling

A. The Contractor will be responsible for providing all fuel needed for the operation of City and Contractor supplied compost equipment. All diesel fuel used will be B20 diesel. The City encourages Contractor's purchase and use of alternative fuels and electric equipment when applicable.

B. The Contractor will manage and control all fuels to minimize loss due to theft, venting due to inefficient fueling practices, or other circumstances.

C. In the event that the Contractor is requesting to perform above ground diesel or biodiesel fuel storage on-site for the off-road equipment, the Contractor will submit their plans and designs to the Contract Monitor for approval before the Contractor obtains all required permits and authorizations to meet all City, State, County or Federal regulations and requirements.

### 3.18. Equipment Body Work

The Contractor will be responsible for all equipment body repair work and painting. All body work and painting must be performed to industry best standards or OEM specifications. No unit may be run in service with any type of major body damage. This standard includes dings, cracked glass, and major scratches to any surface of the vehicle/equipment. Contractor will not perform major body work of any type and/or painting activities on the Site.

### 3.19. Transportation/Towing Equipment

The Contractor will be responsible for all equipment transportation or towing. The Contractor will request in writing a plan to Transport/Tow any City provided equipment before removing equipment from the Site. The Contractor is responsible for meeting all Arizona DOT and Arizona DMV licensing requirements when transporting vehicle/equipment. The Contractor is also



responsible for ensuring that the contracted towing vendor is also operating in compliance with all Arizona DOT and Arizona DMV licensing requirements when towing equipment from the Site.

### 3.20. Facility Maintenance and Cleaning

A. The City intends for the Compost Facility to be a showcase to the public and other entities of the City's compost and diversion efforts. The Contractor will, at its own cost and expense, maintain a safe, clean and exemplary work environment. Due to the nature of the work conducted at the Site, all work functions are to be actively supervised by designated Contractor staff.

B. The Contractor will ensure that all of the Contractor's areas are kept clean and litter free. Litter originating in the Contractor's use areas will be cleaned up immediately to prevent such litter from blowing elsewhere on the Site. All other litter and spillages will be removed or cleaned up by the Contractor on a daily basis or more often as required. The Contractor agrees to be fully responsible and liable for cleaning up any leaks, spills or other discharges of motor oil, hydraulic fluids, diesel, gasoline and other materials resulting from the Contractor's activities.

C. In addition to maintaining the stationary equipment as described in this Scope of Work, the Contractor will, at its own cost and expense, maintain all fire alarm, fire suppression and fire sprinkler systems installed at the Compost Facility to maintain compliance with Phoenix Fire Code and National Fire Protection Association (NFPA) standards. Access to the system and maintenance reports will be provided for City inspection at least semi-annually or as frequently as deemed necessary by the City. Any findings from the inspections must be corrected immediately by the Contractor. Failure to timely correct the audit findings will be considered a material breach of the Agreement.

D. The Contractor, at its sole cost and expense, is responsible for maintaining all landscaped areas across the Site including but not limited to weed removal, trimmings, litter removal, and watering. All landscape trimmings produced from the maintenance will be used as feedstock at the Compost Facility.

E. Only materials and equipment that are used directly in the performance of the services outlined in this Agreement will be brought to and stored on the Site by the Contractor in accordance with all regulations and laws. Materials and equipment will be stored in designated areas mutually agreed upon by the City and the Contractor. Protection of materials and equipment stored onsite is solely the responsibility of the Contractor.

F. Included with the Compost Facility will be two single wide trailers for the Contractor and a restroom and locker room trailer. The Contractor is responsible for all furniture, electronics and appliances for the trailers and employees. The Contractor will be responsible for the rental or purchase of portable toilet and handwashing station for customers in the unloading area.

G. The Contractor will be responsible for providing site-wide custodial services, facility sweeping and cleaning, and all Contractor generated fluid waste removal including all supplies needed. Custodial services include but are not limited to daily cleaning, restocking and trash removal for the administration and restroom trailers, pumping and removal of black water and solids from restroom trailer holding tanks as needed but no less than monthly, semiannual (twice per year) carpet cleaning, vinyl floor sealing and polishing, and window washing for the trailers, maintenance of portable toilet and handwashing station in the unloading area including pumping

of black water and solids, cleaning and restocking and sweeping and immediate litter and debris removal across the entire facility to prevent blowing to other parts of the facility.

H. The Contractor will be responsible for all safety, office, and operational signage for the entire facility as it relates to the service delivery as identified in this Agreement. The City is responsible for all speed enforcement calculation and signage. All sign installations must be approved through City designated staff. All future sign installations must be performed by the Contractor.

I. The Contractor will be financially responsible for any facility and/or equipment damage throughout the Compost Facility or its subcontractor's misuse (accidents, improper operation, theft, unauthorized installation or modification of equipment, etc.). The aforementioned repairs or replacement will be performed by and resolved through the Contractor. All of these replacements will be the property of the City.

### **3.21. Scheduled and Unscheduled Facility Maintenance, Repairs, and Replacements**

A. The Contractor, at its sole cost and expense, is responsible for the preventative maintenance, repairs and replacements of all components of the Compost Facility as outlined in the Compost Facility OMP and this Agreement.

B. The Contractor will proactively address maintenance, replacement and repairs to minimize downtimes of components and the facility overall.

C. Any equipment or facility maintenance, replacements or repairs requiring facility shutdown requires advance written notice to the City.

### **3.22. Capital Improvement and Modifications**

A. The City will have the right, in its sole discretion, to approve all capital improvements and modifications to the Compost Facility. Any Contractor proposed capital improvement will be submitted to the City in writing for review and approval.

B. The City understands that as the facility ages, capital improvements may be needed. Capital improvements and replacements are the responsibility of Contractor. If any such capital improvement is determined to be in the best interest of both the City and the Contractor, both parties can negotiate terms or share the costs for the improvements.

C. Title to and ownership of the facility, including any modifications or additions thereto by the City or the Contractor, will be in the name of the City and held by the City.

### **3.23. Circular Economy Services and Pilot Programs**

A. The Contractor may be required to perform additional non-routine services or conduct green organics, food scraps, digestate, biochar, and/or bio-solid pilot programs outside of the normal scope of work to support the City's zero waste and circular economy goals. Should the City require these services or additional material processing, labor, or site improvements related to the Compost Facility operations, the City may negotiate with the Contractor to make these improvements as necessary to continue or improve the compost operations. At the request of the City, the Contractor will provide a scope of work and price quote for additional services to be provided. All miscellaneous services must be approved in writing prior to commencing any work.

B. The Contractor may propose to the City options to use an additional ten acres of undeveloped land adjacent to the compost facility at a market rate for expanded processing capacity. The Contractor will submit proposals in writing to the City for comment and approval. Upon approval of the proposal the City will negotiate terms with the Contractor.

C. The Contractor will develop and implement protocols for continuous field testing to confirm composability of products in partnership with certification agencies including but not limited to Compost Manufacturing Alliance and Biodegradable Plastics Institute and manufacturers. As the City works to achieve its solid waste diversion and circular economy goals, the City may request product testing as well.

### 3.24. Compost and Landscape Products Marketing

A. At least two weeks prior to the start of operations the Contractor must submit to the City the Marketing Plan for the landscape products produced at the Compost Facility. The Contractor must promptly submit to the City any changes to the marketing plan and strategy. The Marketing Plan should include, but not be limited to, the following components:

1. Statement of Landscape Materials and Compost Marketing Policy - The Marketing Plan will include a detailed statement of the overall policy concerning specific landscape and compost marketing goals, objectives and means including, but not limited to, the following:

- a. Maximizing revenue.
- b. Maximizing quality.
- c. Use of direct sales versus broker sales.

2. Organization of Marketing Function - The Marketing Plan will include a detailed description of the organization. Specific individuals and responsibilities will be identified.

3. Marketing Strategy - The Marketing Plan will include a detailed marketing strategy that includes the following:

- a. Proposed product lines and corresponding market values and indicators;
- b. Proposed admixtures;
- c. Proposed bagging, packaging and branding of each product line;
- d. Processing and transportation costs for each product line;
- e. Identification of current viable local markets;
- f. Solicited or negotiated pricing and Agreement proposals for each product line; and,
- g. Process for comparing and reporting on actual revenues received versus market indicators.

4. Quality Assurance - The Marketing Plan will include the process to maintain the quality of the material and include the following:

- a. Material Specifications
- b. Sampling/Testing
- c. Ongoing quality training
- d. Inventory inspections
- e. Shipment inspections
- f. Quality deviance notifications and procedures
- g. Quality deviance records

5. Contingency for Market Depressions - The Marketing Plan will detail the procedures the Contractor will implement in the event of market depressions, including notification to the City, initial plans for the development of alternative markets and/or product lines and, as a last resort, emergency storage of materials.

B. The Contractor and the City will consult from time to time as to any revisions to the marketing plans which may be necessary or appropriate to take account of changes in the market conditions for compost and landscape products, but no less than annually.

C. The Contractor will, immediately following the Agreement effective date, commence marketing activities to maintain and enhance landscape products and compost markets. Contractor will, no later than 30 days prior to the start of operations, use commercially reasonable efforts to secure and maintain purchase commitments.

**D. Finished Compost Risk and Liabilities**

1. The Contractor agrees to bear the entire risk of and sole and absolute responsibility for the marketing, distribution, conveyance, transfer, transportation, handling, storage, use, sale and disposal of shipped compost and shipped landscape products and all costs, charges, taxes, and liabilities associated therewith and with assuring the beneficial use of shipped compost in accordance with this agreement. In the event of a sample failure, resampling and analysis is permitted to confirm test results.

2. As between the parties, title to, risk of damage or injury from, and liability for shipped compost will pass to the Contractor upon receiving the feedstocks for that compost at the facility. Contractor is solely responsible for notifying the purchasers of compost or landscape products in writing of any limitation on the use of those products. Without limiting the foregoing, the Contractor will indemnify, defend and hold harmless the City from and against all claims, losses, damages, liability and expenses resulting from Contractor's marketing and distribution of shipped compost and landscape products. Such indemnity will extend to all claims, losses, damages, liability and expenses resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any person from exposure to or as a result of using shipped compost and landscape products based on any theory of recovery including theories of product liability, toxic tort or environmental impairment. The Contractor will promptly notify the City of any claim or significant threat of a claim by any person on account or arising out of the marketing or distribution of shipped compost and landscape products by Contractor hereunder.

### 3.25. Sampling and Testing

- A. The Contractor will participate in US Composting Council's Seal of Testing Assurance (STA), Organic Materials Review Institute (OMRI) and any other certifications required by the compost market. The Contractor will conduct monthly OMRI and STA sampling and testing protocols for the compost produced at the Site.
- B. The Contractor is required to notify the City of any downgrading or rejection of compost or landscape products by a market or failure to meet US Composting Council's STA within one week of that occurring. The Contractor must provide a written explanation of circumstances associated with that event, as well as the steps it will take to remedy the cause of that rejection or downgrade, in its monthly report to the City.
- C. The cost of all of the testing and certifications will be the responsibility of the Contractor.
- D. The Contractor will also be responsible for tracking the distribution of compost and landscape products shipped from the facility for quality assurance.
- E. The Contractor will promptly forward all test results to the City upon receipt of the results. The City reserves the right to post results to the City's website.
- F. The City will have the right to conduct third party verification testing on landscape and compost products produced at the site as deemed necessary by the City.

### 3.26. Meetings and Communication

- A. In order to minimize problems and to provide a forum for discussing and resolving any operational questions or issues that may arise, the Parties will meet on a regular basis and will adopt certain communications procedures as follows:
  - 1. Telephone, E-Mail and In-Person During Operating Hours - During the term of this Agreement, the Contractor will have a Supervisor on-site at all times during business hours and a phone number with voicemail answered at all times during business hours. At the start of the Agreement, the Contractor will develop and provide to the City their communication protocols including when the administration trailer is not staffed.
  - 2. Telephone, E-Mail and In-Person During Non-Operating Hours - The Contractor will have an off-hours phone number with voicemail provided to the City and customers. At the start of the Agreement, the Contractor will develop and provide to the City their contacts in case of an emergency.
  - 3. Meetings prior to the Facility Operational Date - Upon reasonable notice, the Contractor will meet with the City prior to the Compost Facility operational dates for the purpose of reviewing and discussing the Contractor's obligations under this agreement.
  - 4. Monthly Operational Meetings After the Facility Operational Date - After the Compost Facility operational dates, meetings will be held between representatives of the parties on a monthly basis unless otherwise mutually agreed. The primary purpose of such meetings will be to evaluate progress or problems, to air and seek resolution of complaints, to discuss any actual or perceived problems with service, review and discuss day-to-day operations, public relations, marketing and other issues as the parties deem appropriate.

5. Quarterly Stakeholder Meetings - After the Compost Facility operational dates, meetings will be held quarterly with the Contractor, City and other stakeholders of the Resource Innovation Campus including large haulers and providers of the feedstocks into the facilities. The primary purpose of these meetings is to address any actual or perceived cross operational challenges, public relations, and discuss the progress of the Resource Innovation Campus.

### 3.27. Customer Service and Public Relations

A. The Contractor will assist the City with public information programs by providing information to support these programs including hosting tours of the facility. The Contractor will maintain staff in the administration trailer and keep the trailer open during the facility business hours to address customer questions and concerns and be available for inquiries and reasonable tours from city staff and the public. The Contractor will provide laborers or spotters in the unloading area to direct and assist customers. Contractor will maintain highly trained staff operating equipment adjacent to the unloading area to prevent any accidents involving customers.

B. The Contractor will provide appropriate classroom and hands-on training for staff on customer service. The Contractor will establish a protocol for the documentation, investigation and response to customer complaints. Complaints received through the offices of the Mayor, City Council, City Manager's Office or Public Works Department must be responded to within three business days.

C. The City will receive up to 500 cubic yards of compost annually for designated City projects at no cost. The City's Contract Monitor or Designee will formally request the material in writing. The Contractor will keep a monthly tracking of the quantity used by the City in the monthly reports. All other City requests for landscape products not authorized or approved by the Contract Monitor or Designee will be provided by Contractor at the discounted rate specified in Attachment A.

D. The City desires to be a customer of the finished compost in addition to the 500 cubic yard annual allocation to support the local circular economy. There is a demand for quality compost socks for City projects that uses compost produced at the City's facility. The City will coordinate with the Contractor to provide all necessary details including location and quantity. The City will provide specifications of compost sock products for proposed rates that would be billed by the Contractor to the City for the product lines.

E. The Contractor will provide opportunities for Phoenix residents to purchase compost produced at the facility either through direct sales at the compost facility or partnerships with local businesses. The Contractor will communicate the purchase methods and any discounts to the City to promote to residents.

F. The Contractor will partner with the City to jointly host industry conferences and tour requests including the US Composting Council Conference Equipment Demonstration. This includes providing any equipment, staff and access to the facility that is needed.

### 3.28. Reporting and Accounting

#### A. Daily Reports

1. The City will provide the Contractor with daily inbound organics reports from the scale houses.

2. The Contractor will provide daily reports to the City of contaminated loads (above 5%, and customer issues including dates, times and decal numbers.
3. The Contractor will provide daily reports to the City on any customer complaints including details about the interaction.

## **B. Monthly Reports**

1. At least two weeks before the operational date, the Contractor will submit to the City a format of the monthly reports to be used by the Contractor in preparing the monthly reports for the City's review and approval. The Contractor will work with the City prior to ensure that the final format is approved by the City prior to the facility operational date.
2. The City will provide the Contractor with a monthly inbound organics report from the scale houses by the 5th of the month for the preceding month.
3. The Contractor will submit monthly reports via email commencing the first Agreement month after the facility operational date. These reports will be due within 15 days from the last day of each Agreement month.
4. At a minimum each report will include the following for each reporting month:
  - a. Monthly inbound tonnage by feedstock type (Class A and Class B), less the tonnage hauled away by the City.
  - b. Monthly invoice that corresponds with the approved monthly report information from this section and pricing from Attachment A.
  - c. Finished compost and mulch sold or given to the City.
  - d. Report of sales including product lines and companies/brand name of sale.
  - e. Supporting documentation for any revenue to the City.
  - f. Monthly and Fiscal Year by date summary of the number of hours and days the facility was in operation and the number of staff and staff hours.
  - g. Well water usage and frequency of pumping black water tanks.
  - h. A record of any non-routine incidents that occurred, including but not limited to, damages to city equipment and/or other facility areas, accidents, emergencies, damages or losses of compost product.
  - i. City equipment usage and maintenance and repair activities.
  - j. Scheduled major repairs and maintenance of facility and city equipment including scheduled shutdowns.
  - k. Employee training provided during the month.
  - l. Staffing changes during the month.
  - m. Highlights of any other noteworthy experience, measures taken to resolve problems and increase efficiency, improve customer service and improve quality of compost and landscape products.

### **C. Annual Reports**

1. The Contractor will provide Fiscal Year-End (July – June) annual reports during each Agreement year the facility is in operation via email. These reports will be due within 30 days after the end of each Fiscal Year.
2. At a minimum, the annual reports will include:
  - a. A collated summary of the information in the monthly reports;
  - b. Capital Improvements completed;
  - c. Highlights of any other noteworthy experience, measures taken to resolve problems and increase efficiency, improve customer service and improve quality of compost and landscape products;
  - d. A forecast of the upcoming year's activities;
  - e. An accounting of all revenues collected by the Contractor; and,
  - f. Equipment Maintenance and Asset Management Report.

### **D. Recordkeeping, Accounting, and Auditing**

1. The Contractor will keep and maintain current, complete and detailed records including, but not limited to, (i) records that provide the basis for the reports required under this section, including all matters affecting amounts payable by or to the City or Contractor under this Agreement, (ii) policies for required insurance, policy amendments, and all other related insurance documents; and (iii) accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with Contractor's performance under this Agreement in accordance with generally accepted accounting principles.
2. The Contractor's books, records and accounts will accurately, fairly, and in reasonable detail reflect all Contractor's dealings and transactions under this Agreement and will contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards.
3. The City, or its audit representative, will have the right at any reasonable time to inspect, copy, and audit the records, accounting records, vouchers, and their source documents which serve as the basis for costs, receipts, and payments. The said records will be available for the City's inspection and audit for a period of three (3) years following the termination of this Agreement and for such further periods as may be necessary to resolve any matters which may be pending at that time or any longer period required by applicable law. The Contractor will make available any such records to the City upon request.
4. The Contractor will immediately notify the City should it become apparent that Contractor is unable to pay its debts as they become due and payable or if there is an adverse change in the Contractor's financial condition.
5. The Contractor will, upon the City's request, provide to the City Contractor's most recent audited financial statements or unaudited if the audited are not then available.



### **E. Reliability of Reports**

1. The Contractor represents that all information the Contractor has provided or will provide to the City is true and correct and can be relied upon by the City in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any materially false or misleading information or omission is just cause for the City to terminate this Agreement and to pursue any other appropriate remedy.

### **3.29. Inspection**

A. The City, its representatives and invitees, or the City's consultants will have the right of access to observe and inspect the facility, processing equipment, including the operations, provided that all such visits will be conducted in such a manner so as to minimize interference with the Contractor's performance and operations. In connection with such visits, the Contractor may require such persons to comply with its reasonable safety rules and regulations. Nothing contained in this Section will be deemed to authorize the City to direct the operations of the Contractor or be responsible for any of the Contractor's obligations under this Agreement.

B. The City, at its own expense, may at any time inspect all records related to the facility and inspect the facility to verify that the facility is being operated and maintained in accordance with this Agreement. The inspection may review if the facility is in compliance with provisions of this Agreement, and has been maintained in accordance with good maintenance, renewal and replacement practices. The inspection may consist of an audit of all facility operating records for the previous contract year. The inspection may consist of an inspection of the physical facility with emphasis on safety and hazard mitigation, and a test of all instrumentation used for determining facility performance, a review of facility and processing equipment, mobile equipment and other equipment maintenance and replacement records.

C. The City's inspections will not relieve Contractor of any of its obligations herein or impose any liability upon the City.

## 4. Evaluation Process

### Evaluation Criteria

No.	Evaluation Criteria	Scoring Method	Weight (Points)
1.	<p><b>Financial Plan and Price</b></p> <p>A. The Contractor will provide redacted bank statements demonstrating financial ability to take out loans, purchase equipment, operate the facility and pay revenue share.</p> <p>B. Provide a statement from a B+ Surety Company identifying the Contractor's bonding capacity.</p> <p>C. Completion of Attachment A - Pricing Sheet.</p>	Points Based	400 <i>(40% of Total)</i>

2.	<p><b>Operations and Maintenance Plan</b></p> <p>A. The Operations and Maintenance Plan will specify how the Contractor intends to fulfill its responsibilities to manage the operation and maintenance of the Facility in accordance with this Agreement. The Operations and Maintenance Plan will build upon and supplement the Contractor's representations regarding operation and maintenance as specified in the Contractor's Proposal. The Operations and Maintenance Plan will specify how the Contractor will operate and maintain the facility and equipment.</p> <p>B. The Operations and Maintenance Plan will address compliance with all municipal, county, state and federal laws and regulations as outlined in the Scope of Work.</p> <p>C. The Operations and Maintenance Plan will specify how the Contractor intends to operate the facility to produce marketable compost using the reversing positive and negative aeration design of the facility and corresponding stationary equipment provided in Attachments I, J and K. Please propose the staffing and mobile equipment that would be required by the Contractor to operate the facility at the 55,000 tons per year capacity. Elements of the Operations and Maintenance Plan need to include the following as outlined in the Scope of Work.</p> <p>D. Attachments M and N are the Operations Manual and Controls Guide provided by the firm that designed the facility at the start of operations. These documents may not reflect all of the current operating conditions as the operations have evolved over time as operational experience has grown. The documents are provided as reference only and should not be provided verbatim in the proposal and OMP. The City requests proposals and an OMP that focuses on the proposer's approach to optimally operate and maintain the facility given their experience and the information provided in this RFP.</p>	Points Based	250 (25% of Total)
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	<ol style="list-style-type: none"><li>1. Fire Mitigation</li><li>2. Emergency Actions and Notifications</li><li>3. Dust Control</li><li>4. Noise Control</li><li>5. Debris and Trash Control</li><li>6. Contamination Control</li><li>7. Odor Control</li><li>8. Stormwater Pollution Prevention</li><li>9. Safety and Training Plan</li><li>10. Equipment Purchase</li><li>11. Equipment Maintenance to OEM Specifications</li><li>12. Fueling</li><li>13. Facility Maintenance and Cleaning</li><li>14. Receiving Area and Customer Management</li><li>15. Feedstock Preparation</li><li>16. Grinding and Mixing</li><li>17. Composting and Turning</li><li>18. Water and Temperature Management</li><li>19. Aeration Control</li><li>20. Curing and Turning</li><li>21. Screening, Stockpiling and Product Loadout</li><li>22. Biofilter Management</li><li>23. Pond Management and Reapplication of Process Water</li><li>24. Process to Further Reduce Pathogens</li></ol>		
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3.	<p><b>Marketing, Qualifications, and Experience</b></p> <p>A. Provide a marketing plan based on the information provided in the Scope of Work, Special Terms and Conditions, and Insurance and Indemnification sections.</p> <p>B. The marketing plan will include the marketing policy, organization of marketing function, marketing strategy, quality assurance and contingency for market depressions as described in the Scope of Work.</p> <p>C. Demonstrate the qualifications and experience to operate and maintain the facility and successfully market the finished compost produced as described in the Instructions and Scope of Work sections of the RFP.</p>	Points Based	250 <i>(25% of Total)</i>
4.	<p><b>Training and Startup Plan</b></p> <p>The training and startup plan should specify how the Contractor plans to operate the facility within three months from award of contract assuming the mobile equipment listed in Attachment J is available to the Contractor for the first year of operations and availability of stationary equipment for the duration of the agreement.</p>	Points Based	50 <i>(5% of Total)</i>
5.	<p><b>References</b></p> <p>Provide at least three references from government or business entities for which similar services were provided by Proposer as what the City is requesting.</p>	Points Based	50 <i>(5% of Total)</i>

## 5. Standard Terms and Conditions

### 5.1. Definition of Key Words Used in the Solicitation

**Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

**Should:** Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

**May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

"A.R.S." Arizona Revised Statute

"Buyer" or "Procurement Officer" City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

"City" The City of Phoenix

"Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

"Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.

"Days" Means calendar days unless otherwise specified.

"Chief Procurement Officer" The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

"Employer" Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

"Offer" Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

"Offeror" Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

"Solicitation" Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed Offers, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, Offers, or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

## 5.2. Contract Interpretation

- A. **Applicable Law:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
  2. Special terms and conditions
  3. Standard terms and conditions
  4. Amendments
  5. Statement or scope of work
  6. Specifications
  7. Attachments
  8. Exhibits
  9. Instructions to Contractors
  10. Other documents referenced or included in the Solicitation
- C. **Organization – Employment Disclaimer:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- D. **Severability:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

- E. **Non-Waiver of Liability:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **Parol Evidence:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

### 5.3. Contract Administration and Operation

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **Discrimination Prohibited:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **Equal Employment Opportunity and Pay:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as



amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.
  
2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
  4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **Legal Worker Requirements:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
  2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
  3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **Health, Environmental, and Safety Requirements:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
  2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
  3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. **Compliance with Laws:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances

when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

- G. **Lawful Presence Requirement:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.
- H. **Continuation During Disputes:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- I. **Emergency Purchases:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

#### 5.4. Costs and Payments

- A. **General:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **Payment Deduction Offset Provision:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **Late Submission of Claim by Contractor:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **Discounts:** If applicable, payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

- E. **No Advance Payments:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- F. **Fund Appropriation Contingency:** The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- G. **Maximum Prices:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- H. **F.O.B. Point:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

## 5.5. Contract Changes

- A. **Contract Amendments:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- B. **Assignment - Delegation:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- C. **Non-Exclusive Contract:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The

City reserves the right to obtain like goods or services from another source when necessary.

## 5.6. Risk of Loss and Liability

- A. **Title and Risk of Loss:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- B. **Acceptance:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **Loss of Materials:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **Contract Performance:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to

its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **Damage to City Property:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

## 5.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **Non-Exclusive Remedies:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **Default in One Installment to Constitute Breach:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **On Time Delivery:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- D. **Default:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the Solicitation and/or Performance Bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **Covenant Against Contingent Fees:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

- F. **Cost Justification:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- G. **Work Product, Equipment, and Materials:** All work product, stationary equipment or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. The Contractor may retain their purchased mobile equipment. Contractor agrees to assign to City all rights and interests. Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

## 5.8. Contract Termination

- A. **Gratuities:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- B. **Conditions and Causes for Termination:**
  - 1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
  - 2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
    - In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
    - In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;

- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or gives the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

C. **Contract Cancellation:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

## 5.9. Notice

Any notice, consent or other communication (“Notice”) required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

If to Contractor:

If to City: Stacy Hettmansperger

Solid Waste Administrator

Phoenix Public Works Department

Desk: 602-495-2496

Email: [stacy.hettmansperger@phoenix.gov](mailto:stacy.hettmansperger@phoenix.gov)

## 5.10. Integration

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party will be bound by or liable for any statement of intention not so set forth.

## 5.11. State and Local Transaction Privilege Taxes

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the Contractor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek



advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

## 5.12. Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

## 5.13. Tax Responsibility Qualification

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

## 5.14. No Israel Boycott

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

## 5.15. No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is

not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

## 5.16. Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

## 5.17. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

## 5.18. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

## 5.19. Claims or Demands Against the City

- A. Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.
- B. Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes §

12-821.01(C), sufficient to affect the date on which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

## 6. Special Terms and Conditions

### 6.1. Term of Contract

The term of this Contract will commence on or about March 1, 2025 and will continue for a period of seven (7) with three 1-year options for a total of 10 years.

### 6.2. Method of Ordering

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

### 6.3. Method of Invoicing

Invoice must be emailed in .pdf format to [invoices@phoenix.gov](mailto:invoices@phoenix.gov) and must include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number
- Unit price, extended and totaled
- Quantity ordered, back ordered, and shipped
- Applicable tax
- Invoice number and date
- Delivery address
- Payment terms
- FOB terms
- Remit to address

### 6.4. Method of Payment

Contractor will be paid on a monthly basis in arrears.

### 6.5. Partial Payments

Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.

### 6.6. Supplier Profile Changes

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

## 6.7. Estimated Quantities or Dollar Amounts (Requirements Contracts Only)

Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period.

## 6.8. Suspensions of Work

The City reserves the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

## 6.9. Hours of Work

All work under this contract shall be coordinated with the City's authorized Department representative. Any changes to the established schedule must have prior written approval by the City's authorized Department representative.

## 6.10. Demonstration

The City may, in its discretion, require a demonstration of the products or services offered as part of the evaluation process. The demonstration shall be provided by the Contractor at no cost to the City for the period deemed sufficient to properly evaluate the product or service. The exact time, conditions, and terms of the evaluation shall be established at the time a demonstration is requested.

## 6.11. Hiring of Each Other's Personnel

Without the prior written consent of the other party, each party shall not actively target for hire personnel of the other party through the term of this Agreement and for six (6) months after the expiration or termination of the last Statement of Work executed by the parties. This prohibition does not apply to or affect in any way the City's standard recruitment processes. The City will not pay a fee or owe any compensation whatsoever to the Contractor if Contractor's employee files an employment application, competes successfully and is hired into a City position. Individuals who are employed by Contractor agency and who are on assignment at the City may file an application for regular City employment and be considered on the same merits and qualifications as would all other applicants. For this reason, compensation to Contractor would not be appropriate and not incurred if such worker succeeds in the selection process and is appointed to a regular City position.

## 6.12. Liquidated Damages

If the Contractor fails to deliver the supplies or perform the services within the time specified in its contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the City as fixed, agreed and liquidated damages for each calendar day of the delay, the amount of N/A. The City may terminate this contract in whole or in part as provided in the "Default" provision. In that event, the Contractor shall be liable for such liquidated damages accruing until

the City may reasonably obtain delivery or performance of similar supplies and services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond its control and without fault or negligence, as determined by the City. The Chief Procurement Officer will be the sole judge in determining the liquidated damages.

### **6.13. Procurement Reports**

Contractor shall submit quarterly reports in an electronic format acceptable to the City during the term of this contract commencing one month after the effective date. These reports are due by the 15th day of the month following the reporting period. Total purchases for each department must be shown on a separate line. Report should be rounded to the nearest dollar. Contractor will provide sample forms for approval by the City.

### **6.14. Single Source for Warranty Work**

Contractor shall be fully responsible for all warranty work. In addition, Contractor shall have or establish a single local Phoenix source that will accomplish or coordinate any necessary warranty work. Contractor shall respond to requests for repairs within N/A after a verbal request by the City.

### **6.15. Warranty**

All equipment supplied under this contract shall be fully guaranteed by the Contractor for a minimum period of two years from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the Contractor (including parts and labor) without cost to the City.

### **6.16. Equipment Installation**

All equipment shall be completely assembled and installed by the Contractor and ready for use on the City's property at 3060 S 27th Ave, Phoenix, AZ 85009.

### **6.17. Evaluation Literature**

Offers submitted for products considered by the Contractor to be equal or better than the products specified herein must be submitted with technical literature and/or product brochures for the City's use to evaluate the offered products. Complete specifications, literature, illustrations, blueprints, photos etc. describing the offered product shall be included with the Offer. Contractor shall indicate any variation between the product offered and the literature submitted.

### **6.18. Industry Standards**

It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

The term “heavy duty” if used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality, or capacity supplied with standard production items and it shall be able to withstand unusual straining, exposure, temperature, wear and use.

The City reserves the right to waive minor variations if, in the opinion of the City’s authorized Department representative, the basic unit meets the general intent of these specifications.

The product offered shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

If the specifications stated herein for component items do not comply with legal requirements, the Contractor shall so notify the City prior to the offer opening due date.

### 6.19. Inspection and Acceptance

Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Contractor prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Contractor’s responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.

### 6.20. Manuals

All complete operating manuals and parts manuals are to be furnished upon delivery at no additional cost to the City. Manuals and other materials shall show all **enter specific equipment** specifications and mechanical troubleshooting in paper and electronic media.

### 6.21. New Equipment

All items offered shall be new equipment supplied from the manufacturer. Offers for remanufactured/refurbished equipment will be considered as non-responsive and rejected.

### 6.22. Removal and Trade-In of Equipment

Trade-in equipment offered in this solicitation will be as-is, where-is with no warranty either expressed or implied as to current condition. All costs, labor, and equipment required for the removal will be the responsibility of the Contractor.

### 6.23. Training

Contractor shall include a total of n/a of onsite training for a minimum of n/a City personnel to assure proper operation and utilization of the equipment. Costs for all training shall be included in the price of the equipment/indicated in the pricing proposal.

### 6.24. Communication in English

It is mandatory that the Contractor’s lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

## 6.25. Service Locations

To minimize the City's transportation and handling costs, the Contractor's location(s) will be a factor in the City's award decision.

## 6.26. Background Screening

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

## 6.27. Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

## 6.28. Terms of This Section Applicable to all Contractor's Contracts and Subcontracts

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

## 6.29. Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

## 6.30. Continuing Duty; Audit

Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

## 6.31. Variances and Exemptions

Contract Workers who fall under the following areas may be considered exempt from this policy:



- Federal Homeland Defense Bureau.
- Transportation Security Administration.
- Federal Aviation Administration.
- Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
- Arizona or other State Bars.
- Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City’s discretion.

### 6.32. Contractor’s Default; Liquidated Damages; Reservation of Remedies for Material Breach

If Contractor is required to access any City facilities without an escort, City badging is required. Contractor’s default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker’s badge or key upon termination of Contract Worker’s employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor’s failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City’s actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section

arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

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### 6.33. Employee Identification and Access

Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must always have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

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### 6.34. Key Access Procedures

If the Contractor Worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

### 6.35. Stolen or Lost Badges or Keys

Contractor must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

### 6.36. Return of Badge or Key

All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this

agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

### 6.37. Badge and Key Fees

The following constitute the badge and key fees under this agreement, which shall be paid for at the Contractor's sole cost and expense, unless otherwise provided for in the scope of work. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Initial Badge Fee: \$55.00 per application

Replacement Badge Fee: \$55.00 per badge

Lost/Stolen Badge Fee: \$55.00 per badge

Replacement Key Fee: \$55.00 per key

Replacement Locks: \$55.00 per lock

### 6.38. Background Screening – Maximum Risk

- A. **Determined Risk Level:** The current risk level and background screening required is MAXIMUM RISK.
- B. **Maximum Risk Level:** A maximum risk background screening will be performed every seven years when the Contract Worker's work assignment will:
  1. work directly with vulnerable adults or children, (under age 18); or
  2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
  3. unescorted access to:
    - a. City data centers, money rooms, high-value equipment rooms; or
    - b. unescorted access to private residences; or
    - c. access to critical infrastructure sites/facilities; or
    - d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.
- C. **Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening

levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

### 6.39. Additional Maximum Risk Background Checks

Maximum screening will additionally require:

- Credit Check (for cash handling, accounting, and compliance positions only)
- Driving records (for driving positions only)
- Fingerprint verification (when Contract Worker is working directly with children or vulnerable adults or scope takes the individual to a City location with Criminal Justice Information System (CJIS) access.)

### 6.40. Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- G. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- H. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.

- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- M. For any childcare or health worker positions, or Criminal Justice Information Systems access in the scope of work, Contractor is required to send the City updated background checks every three years.
- N. The Contractor will submit prior to scheduling any services, a current list of names, addresses, and social security numbers of all employees requiring access to the facility. The Contractor is responsible for obtaining security clearance from the Police Department for all employees. The City reserves the right to change the restricted areas as needed. The Contractor grants the rights to the Police Department to conduct background checks of all employees entering the building. All employees will submit to the background check before access to the facility is given.
- O. The background checks will be conducted prior to any employee entering to work and will be based upon information provided to the Police Department including, but not limited to: name, address, date and place of birth, social security number, INS number if applicable, and a copy of a valid photo identification. The information will be provided to the City’s authorized Department representative at least five business days (excluding weekends and holidays) in advance of the need for access. The form will be provided by the City’s authorized Department representative. The City’s authorized Department representative will conduct the security check.
- P. The City may, at any time, in its sole discretion, refuse to allow an employee access to an area for any of the following reasons, but not limited to:
  - 1. Conviction of a felony.
  - 2. Conviction of a misdemeanor (not including traffic or parking violation).
  - 3. Any outstanding warrants (including traffic and parking violations).

4. A person currently on parole or probation.
5. A person currently involved in an investigation.

#### 6.41. Confidentiality

“Confidential Information” means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively “Recipient”), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City’s written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys’

fees, damages or proceedings arising out of Contractor's breach of this Section (Confidentiality). Contractor's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

## 6.42. Data Protection

The parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at:

<https://www.fpc.gov/resources/glossary/>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

- A. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:
  1. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;
  2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must

- remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;
  4. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;
  5. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
  6. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws;
  7. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section;
- B. If the Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:
1. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
  2. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;



3. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and
4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to the City, Contractor will defend, indemnify, and hold the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Contractor's breach of this Section (Data Protection). Contractor's obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

### 6.43. Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

#### 6.44. Air Pollution Emergency Proclamation

The City requires Contractors to provide information with their submittal, to the extent practicable, the amount of reactive organic compounds in their products. The City requires Contractors to also identify any products with special storage requirements or special hazards such as, reactive, temperature, or shock sensitive, dangerous when wet or with other unusual hazards.

Contractor should advise the Procurement Officer of any substitute products which contain either no reactive organic compounds or an amount less than that contained in the product(s) specified in this solicitation. This notification should be provided at least ten days prior to the solicitation due date.

#### 6.45. Confined Space Structure Entry

Services performed under this agreement may require Contractor personnel to enter confined spaces. Contractor will be required to furnish equipment for confined space entry and must comply with OSHA regulation 1910.146 or most recent regulation. Contractor shall provide all necessary personnel, supplies, and equipment to satisfy the confined space entry program including, but not limited to, designated rescue personnel, appropriate fall protection supplies, atmospheric monitors and retrieval systems.

Contractor shall have a written Confined Space Entry Program that meets all Federal, State and local regulations and will be required to submit a copy of this program to the City for review and acceptance. The City reserves the right to modify the Contractor's Confined Space Entry Program where it is determined to be in the best interest of the City. Contractor will be required to fully comply with the final approval Confined Space Entry Program while performing work at all City locations.

Contractor's supervisory personnel shall have successfully completed an accredited Confined Space Entry Training Program and a 40-hour HAZWOPER Training Program. Certifications or Certificates of Completion must be current.

#### 6.46. Dust Control

Contractor shall not cause or allow any dust generating operation, use of property, or any other operation which cause fugitive dust emissions that exceed the 20% visible emission opacity limit in Rule 300 of Maricopa County's Air Pollution Control Regulations. The Contractor shall suppress emission of dust to comply with this limit.

The Contractor shall NOT use grading, blading, disking, a gannon or like equipment to control weeds without prior written authorization from the City's authorized Department representative. Earthmoving activities shall be conducted in accordance with the standards and work practices defined in Maricopa County Fugitive Dust Rule 310. Contractor shall obtain a Maricopa County Dust Control Permit for each site where there is earthmoving on areas greater than 0.1 acres. Contractor may submit invoices for reimbursement of dust control permit fees when necessary, provided documentation is included to verify the fee.

The use of leaf blowers is strictly prohibited. Acceptable alternatives to leaf blowers include: brooms, rakes, walk behind leaf vacuums, and PM-10 Compliance Sweepers. Debris shall not be swept into the street.

## 6.47. Energy Star

All products provided in response to this solicitation shall be certified by the U.S. Department of Energy or the U.S. EPA as Energy Star or are certified under the Federal Energy Management Program and in all categories identified at [energystar.gov](http://energystar.gov).

## 6.48. Environmental Preferred Products

The City of Phoenix has adopted a Sustainable Purchasing Policy <https://www.phoenix.gov/oep/spp-about> in an effort to protect human health and the environment, reduce operating expenses, and reduce potential liability associated with the use of hazardous materials.

The chemical products selected for use in this contract shall avoid physical and health hazards by adhering to either of the following requirements:

EITHER meet the most current criteria of one of the following standards, as applicable:

- EPA's Safer Choice,
- Green Seal GS-11 (paints & coatings),
- GS-34 (cleaning/degreasing agents)
- GS-36 (commercial adhesives),
- GS-37 (institutional cleaners),
- or GS-40 (institutional floor care)

OR, meet each of the following criteria:

- (pH) greater than 2.5 and less than 12.
- Flashpoint greater than 150 degrees F
- National Fire Prevention Association (NFPA) or Hazardous Materials Identification System (HMIS) rating of 2 or less in each category.
- Maximum of 50 g/L or 5% by weight volatile organic compound (VOC) content or comply with the California Air Resources Board's maximum allowable VOC limit for consumer products (listed at California Code of Regulations 94507-94517).
- Contain no known carcinogens, reproductive toxins, persistent bioaccumulative toxins (PBTs), or ozone-depleting substances.
- Contain no hazardous waste toxins listed at 40 CFR 261.24 at concentrations that could require regulation of the material as a toxicity-characteristic hazardous waste.

The City maintains the right to request that Contractors supply certification of compliance with the above. SDS's shall be provided to the City upon request. SDS's shall be provided with the solicitation when specified in the scope of work or offer instructions.

## 6.49. Equipment / Safety

The Contractor shall be responsible for providing and for the placement of barricades, tarps, plastic, flag tape, and other safety/traffic control equipment required to protect its employees, the public, surrounding areas, equipment and vehicles. The flow of vehicular traffic shall not be impeded at any time during this project. The safety of the Contractor's employees and the public is of prime concern to the City and the Contractor must take all necessary steps to assure proper safety during the performance of the Contractor.

## 6.50. Hazardous Materials Requirement SDS

Contractor shall provide a copy of the current Safety Data Sheet (SDS) for the product(s) offered. The SDS must include all chemical compounds present in concentrations greater than 0.1% for each product offered by CAS number; no "trade secret" or otherwise defined ingredients shall be accepted by the City. The Contractor shall provide required safety and health training for City employees on each product offered and for proper use, storage, and disposal, when requested by the City. The Contractor further agrees to accept returned empty containers for disposal purposes, if and when requested by the City. The cost for any requested training and disposal of used containers shall be included in the offered price for the product. The Contractor shall also accept returned product that was purchased as a result of this solicitation and for which the City no longer needs the product. Returned product will be in its original container(s), unopened, and must be returned to the Contractor at least 45 calendar days after the end of the project. All products must be labeled per 29CFR 1910.1200.

## 6.51. OSHA Laws and Regulations

**Emergency Spill Response Plan:** Contractor shall determine whether products selected could require an emergency spill response plan for any hazardous material used. If such determination is made, a plan for directing employees in proper response procedures must be submitted. At a minimum, the response plan must address the following:

- Provide a description of equipment on site available to contain and/or respond to an emergency/spill of the material.
- Notification procedures.
- Response coordination procedures between Contractor and the City.
- Provide a Site Plan showing the location of stored hazardous materials and location of spill containment/response equipment.
- Provide a description of the training provided to the Contractor employees.

**Hazardous Materials Storage and Labeling Specifications:** Contractor shall, to the satisfaction of the City of Phoenix's environmental representative, properly and safely store all hazardous materials, which shall include as a minimum, the following:

- Have a designated storage site for hazardous material, which includes secondary containment.

- Provide signage approved by the City of Phoenix's environmental representative clearly identifying the hazardous materials storage site. Signage must be in language understood by Contractor's on-site employees.
- All hazardous materials containers must be labeled according to OSHA requirements and bear applicable NFPA or HMIS labels.

**OSHA Guideline Compliance:** Contractor shall comply with all applicable Federal, State, City and local laws, regulations and rules including, but not limited to:

- Safety Data Sheets – Contractor shall furnish to the City's Department copies of Safety Data Sheets (SDS), or all products used, prior to beginning service in any facility. Contractor must update copies of the SDS on an annual basis. In addition, each time a new chemical or cleaning product is introduced into any facility, a copy of that product's SDS must be provided prior to the product being used in any facility. The Safety Data Sheets must be in compliance with OSHA Regulation 1910.1200, paragraph g.
- Labeling of Hazardous Materials – Contractor shall comply with the OSHA Regulation 1910.1200 paragraph f, concerning the labeling of all chemical containers
- Caution Signs – Contractor shall use caution signs as required by OSHA Regulation 1910.144 and 1910.145 at no cost to the City. Caution signs must be on-site during each scheduled cleaning.
- Blood Borne Pathogens – Contractor shall comply with OSHA Standard 29CFR 1910.1030 Blood Borne Pathogens as it pertains to the training, safety, and equipment needed for all employees engaged in contracted service. Contractor shall be responsible for compliance on date of contract acceptance and shall provide proof to the City's Department.

Proof of compliance with OSHA regulation 1910.1200, Hazard Communication, shall be provided to the City's Department, upon commencement of this Contract, and reviewed by the Department Safety Analyst for verification. Failure of the Contractor or their employees to comply with all applicable laws and rules shall permit the City to immediately terminate resultant Contract without liability.

**SDS Notebooks:** Contractor shall maintain on the site a notebook containing current (dated within the past three years or verified as most current by manufacturer) SDS for all materials being used on site, whether or not they are defined as a Hazardous Material. The notebook shall be kept in the Contractor's on-site storage area. The notebook must be kept up-to-date as materials are brought onto and removed from the site. A complete copy of the SDS notebook shall also be provided to the City. New products must be approved for use by the City by providing a copy of the product's SDS for review and approval.

**Non-Hazardous Materials Labeling Specifications:** The Contractor shall clearly label all packaged products, whether or not they are classified as Hazardous Materials under this Section. If any such unlabeled containers are discovered on the Site, the City's environmental representative will notify the Contractor and Contractor will within one hour clearly label the

container or remove it from the site. Any containers that are filled from larger containers must also be labeled.

**Offsite Storage of Hazardous Materials:** The City encourages storage of hazardous materials off site until the materials are needed on site. Solvent based strippers and cleaners will NOT be stored on City property.

**Hazardous Materials Management Program Documentation:** The Contractor shall make all required documentation available immediately upon request of the City's environmental representative. The Contractor shall also provide the City's environmental representative with copies of all permits obtained from environmental regulatory agencies.

**Contractor Training Requirements:** The Contractor shall provide requested copies of the company's written Hazardous Communications Program to the City of Phoenix that satisfies requirements listed under sections e, f, g, and h of 29 CFR 1910.1200, Hazard Communications. The Contractor must demonstrate how employees are trained in the proper use, storage, and disposal of chemical products and wastes in a language understood by the Contractor's on-site employees.

## 6.52. Pesticides

Pest control shall be managed through prevention, physical and mechanical methods, and with pesticides only when necessary. The City will implement the principles of Integrated Pest Management (IPM) to the extent possible. Contractors will use the least toxic pest control substance required to be effective. Contractor shall submit for approval a list of chemical pesticides to be applied, indicating: trade name, EPA registration number and category (includes herbicides, insecticides, rodenticides, etc.), and label signal word (i.e. caution, warning, or danger) and shall provide the same information prior to using any other product not originally submitted and approved by the City during the term of the contract.

Pesticides must be EPA-registered or exempt from registration under section 25b of the Federal Insecticide and Rodenticide Act (FIFRA) at the time of submittal. All products must be applied in strict compliance with the most current labeling restrictions and/or consistent with most current EPA-approved application use at the time of application.

EPA Toxicity Class I pesticides shall be reviewed for the least toxic effective alternative prior to purchase. Contractors shall review the Groundwater Protection List prior to pesticide purchase; when available, alternative pesticides that are not on the Groundwater Protection List and meet the same need shall be used.

## 6.53. Recovered Materials

The Resource Conservation and Recovery Act (RCRA), section 6002, requires the Environmental Protection Agency (EPA) to designate items ("designated items") that are or can be made with recovered materials. If the City uses at least a portion of federal funds to purchase over \$10,000 worth of a designated item in a given year, the City must purchase the item containing the highest percentage of recovered materials practicable. Contractors can refer to the EPA's Comprehensive Procurement Guide (CPG) for product specifications found at 40 CFR 247 or [www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program](http://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program).

#### **6.54. Right-of-Way Management Program**

Pursuant to Phoenix City Code, Article XV as revised September 18, 2007, the Contractor must comply with the City Right-of-Way Management Program when performing services under this agreement. Requirements may be found at [www.phoenix.gov/streetsraffic-management/right-of-way-mgmt-program-information](http://www.phoenix.gov/streetsraffic-management/right-of-way-mgmt-program-information).

#### **6.55. Additional Replacement and Repair Parts**

All replacement/repair parts and labor shall be guaranteed for a minimum of one year. The Contractor shall maintain a sufficient supply of maintenance and repair parts to maintain only those vehicles listed in this contract. Any repetitive repair for the same problem within one year will be at no cost to the City. Following the expiration of any express or implied warranty applicable to those items, goods or equipment furnished to the City under this contract, Contractor agrees to supply the City (as well as its agents, representatives, contractors and hires) with in-stock repair and replacement parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were contracted to service or install those repair and replacement parts. The Contractor will guarantee that stock of replacement parts specified in this agreement is available locally. Captive parts must be available within 48 hours following the placement of order. If special handling and/or freight are required, the Contractor will assume all charges unless pre-approved by the City. Failure to supply parts within seven calendar days from order date may be cause for cancellation of agreement.

A list of recommended captive parts that the City should maintain in its inventory shall be provided by the Contractor. This list should include wearable items (example: wiper blades, brakes) and all necessary parts used for preventive maintenance (example: oil, and filters). Parts should be listed by their part numbers and description.

Each repair will be invoiced separately, with all parts and labor on the same invoice within 24 hours of final quality assurance inspection. Invoice must include the authorization number (PO), location, and date of service, in addition to all parts and labor, and a summary of problems found and repairs performed.

#### **6.56. Administration Policy For Warranty Policy**

The City will provide the appropriate documentation to the Contractor for warranty processing including work orders and original invoice copies. If there are any additional requirements or documents the Contractor requires they will be supplied to the City after award of the Offer. The documentation will be delivered along with the warranty part(s) to the Contractor for processing. The Contractor has a period of 90 days from the date of submittal to determine the outcome of the claim and to reimburse the City.

#### **6.57. Decals**

Decals or markings of any type pertaining to advertisement other than the manufacturer's name and model designation normally installed by the manufacturer shall not be attached to any vehicle or equipment.

## 6.58. Emission Requirements

Engines, model, accessories and options offered, main and auxiliary (if required), must meet or exceed the Federal Emissions Standards in place at the time the purchase order is issued. Vehicles offered must be the current model in production at the time the purchase order is issued. If the model year offered is a future production model, the Federal Emissions Standard in place at the time of production is required.

## 6.59. Materials Receipt - Auto Stores

Packing slips/delivery tickets authorized by the "Method of Ordering" paragraph must include the following:

- Fleet Services Auto Stores Purchase Requisition (APR) number
- Items must be listed individually and include a written description and part number
- Items unit price extended and receipt totaled, excluding taxes
- Where discounts are applicable, unit prices are to be the contract "list prices" and applicable discount percent shown
- Quantity delivered
- Legible City of Phoenix employee signature and dated
- Multiple page packing slips/delivery tickets must include page numbers

## 6.60. Manufacturer Sponsored Fleet Warranty Administration

The manufacturer and/or Contractor will authorize and reimburse for warrantable repairs on City owned vehicles/equipment by the manufacturer(s) subsidiaries and sold to City by Contractor. City will notify the manufacturer and/or Contractor of any problems that are found before repairs are started. A maximum of two hours of troubleshooting will be allowed. The Contractor will order parts as needed and have them drop shipped to the City location. If required, all damaged parts will be returned to Contractor within 20 days. Contractor will provide all documentation via electronic or printed for warranty reimbursement within 30 days. Upon expiration of this agreement, City and Contractor will determine if any warranty coverage exists for the equipment/vehicles by the manufacturer's subsidiaries and sold to the City by Contractor. Contractor and City may, upon mutual agreement, enter into a new five-year agreement to cover the fully negotiated warranty periods. Vehicles covered by this agreement are exclusive manufacturers and include all vehicles/equipment delivered on or after December 14, 2005.

## 6.61. Non-Warranty Maintenance Parts and Repair

Contractor is requested to provide a percent discount for parts off manufacturers' most current established published price list. Repair parts will be an OEM (Original Equipment Manufacturer) part or an OEM equivalent, or remanufactured according to OEM specifications. All aftermarket parts need to be approved by the City prior to installation.

Contractor is required to submit a shop labor rate for services performed. All labor performed shall be in accordance with OEM labor policies, specifications and procedures. Labor times will



be no greater than times published in an industry recognized labor guide or times that are standard in the industry if labor guides are not available.

### **6.62. Options, Upgrades, and Accessories**

As part of any response hereto, Contractor is expected to supply an Electronic price list, provided via website or jump drive --complete listing of vehicle and/or related equipment, model upgrades, model downgrades, options, replacement parts, services, and accessories with offer. The listing may be provided or in such clearly indicated for ease of evaluation and clarity. Failure to submit those required items may result in offer being considered non-compliant. Additional non-manufacturer accessories, options or upgrades may be purchased anytime and must be priced at the documented dealer's cost with no additional profit.

Rebates, specials, core charges, returns or discounts are to be applied when they are directly attributable to the delivery and/or service of the vehicle. The City reserves the right to audit applicable records to ensure proper administration. Contractor must guarantee an established, reliable, responsive supply chain for the procurement of both major and minor items, components for all items installed, maintained and repaired. A repeated failure to obtain major and minor items and components in the timely manner required completing acquisition; maintenance and repairs to the City's satisfaction would be sufficient cause to terminate any contract. Any options, upgrades or accessories not listed must be approved in advance with actual documented costs to Finance. The Chief Procurement Officer or his authorized representative will be the sole judge in determining the allowable options, upgrades and accessories.

### **6.63. Parts Exchange - Auto Stores**

Contractor expressly agrees to exchange on an equal dollar basis all unused parts of the same manufacturer and brand within one year of purchase. Parts to be exchanged will be those parts which have become obsolete to the City. The Chief Procurement Officer or his authorized representative will be the sole judge of obsolescence.

### **6.64. Towing and Transportation**

Except in the case of a warranty repair or break down, towing or transportation of vehicles to and from the Contractors facility shall be arranged by the Fleet Services. If required, all towing and/or transportation charges required for the pickup and delivery of vehicles to and from the public agency facilities will be the responsibility of the Contractor under the City Administration Regulation 2.95 (Motor Vehicle Authorization and Operations). No vehicle will be driven unless the Contractor's driver has the appropriate driver's license for the vehicle being operated. Contractor shall deliver completed vehicles to the City of Phoenix, Fleet Services Make Ready facility located at 2441 S. 22nd Ave. Phoenix, AZ 85009, or any other public agency facility used to store vehicles, as requested by the City.

### **6.65. Training**

The Contractor shall provide training as outlined below. Training will be provided in a three-phased approach, with an Operator level training class, a Maintenance Orientation class and an In-Depth Maintenance training class provided. The timing of these classes and specific subject matter is detailed below.

**General Training Requirements:** Training will be conducted at the City of Phoenix Fleet Services Division Facility, 2441 South 22nd Avenue, Phoenix, Arizona, unless otherwise designated by same. The Contractor will provide all necessary audiovisual materials and instructors for this purpose. All training classes will contain at least ten City Technicians. The Contractor shall allow videotaping of the training session(s) by City personnel and all tapes shall remain the sole property of the City of Phoenix. Additionally, the Contractor shall provide any available CD/DVD's or access to online resources, on the repair, maintenance, operation and safety of the units or components, at no additional cost. Where available video tapes are copyrighted, it is the Contractor's responsibility to secure written approval for duplication of these tapes for the sole use of the City of Phoenix training process.

Where the Contractor does not have appropriate knowledge or materials for providing this training, it will be the Contractor's responsibility to coordinate and secure, at no additional cost, subcontractors to meet the requirement of this specification.

The Contractor shall allow 21 days scheduling time for Fleet Services to notify appropriate employees of training.

The Contractor shall supply an outline of all training classes to the training coordinator before the first unit is delivered. The Contractor will coordinate all training through Fleet Services Training Coordinator.

**Maintenance Orientation Training:** There will be an initial four-hour orientation training on the maintenance and operation of the vehicle within two weeks of delivery of the first current model unit to the City. The Contractor shall supply an outline to the training coordinator upon delivery of the first unit and be available to provide this orientation up to three times during an agreed-upon one-week period, with one class each held during 1st, 2nd, and 3rd shifts (i.e., there will be a day shift class, a swing shift class, and a grave shift class—held during those shifts' work hours). Orientation training shall be provided according to the following outline:

#### **Technical Manuals (Service and Parts)**

- Format
- Use

#### **Vehicle Familiarization**

- Description of systems and components
- Maintenance services and lubrication
- Vehicle operation
- Warranty specifications and requirements
- Safety

#### **Engine**

- Operation
- Maintenance services and lubrication

- Tune up
- Emissions controls, DPF, DEF System
- Engine controls (manual, electronic, if equipped, shut down, computer controls, if equipped and troubleshooting)
- Cooling system (integrated sub system with pump for aux. cooling, coolant recovery system)
- Oil filtration system
- Ignition system (diagnosis, repair, troubleshooting)
- Fuel system (diagnosis, repair, and troubleshooting)
- EFI/PFI, if equipped

### **Transmission and Drivetrain**

- Description of systems and components
- Operation
- Maintenance services and lubrication
- Service requirements (proper methods and intervals)
- Controls (manual, electronic, if equipped)
- Integrated emergency warning system
- PTO (operation, maintenance services, repair and troubleshooting), if equipped repair and lubrication)
- Split shaft PTO operation if equipped
- Retarder, if equipped
- Tag axle and controls, if equipped

### **Brakes and Air Supply System**

- Description of systems and components
- Operation
- Maintenance services, repair and lubrication of components
- Repair and component replacement (brakes and air systems) Warning devices and troubleshooting
- Anti lock system if equipped

### **Body and Components**

- Lubrication and service requirements
- Adjustments (compartment doors, lids and covers)

### **Hydraulic Systems**

- Description of systems and components
- Operational controls (manual, electronic, proportional and automatic sequencing)
- Maintenance services, repair and lubrication
- Troubleshooting
- System diagnosis

### **Electrical Component**

- Troubleshooting and repair

### **Packer and Lift Operation Hydraulics**

- Description of systems and components
- Maintenance services, repair and lubrication
- Troubleshooting
- System diagnosis

**Maintenance In-Depth Training:** Contractor shall provide the needed resources to train City technicians on methods to diagnose, and troubleshoot all components. This training will be provided by the body manufacturer 90 to 180 days after the first unit is placed into service, in order to ensure the training aligns with anticipated breakdowns and service needs.

This training will be an in-depth, journeyman level class including both classroom time and hands-on training, for a (minimum) three-day (24 hour) course length.

Training will include an emphasis on diagnostics, electrical systems, hydraulics, electrical/pneumatic/hydraulic controls, computerized controls, and typical maintenance and repair subjects associated with the body, packer, and lift as deemed most valuable by the body manufacturer. Training should utilize current model trucks/components, training mockups, cutaways, etc., in order to provide adequate hands-on instruction.

Training will take place at a City facility or at the local vendor's location, or both, and be made available up to three times during a 30 day period (to coincide with truck purchases within each contract year), with one class each held during 1st, 2nd, and 3rd shifts (i.e., there will be a day shift class, a swing shift class, and a grave shift class—held during those shifts' work hours). Classes will hold up to ten City technicians.

An outline of this training and coordination of date and times shall be provided to the training coordinator, prior to any classes.

**Operator Training:** Contractor shall provide onsite operator training at the four City of Phoenix service centers for ten operators. This training will be coordinated with the City or public agency's training department.

**Vehicle Familiarization**

- Description of systems and components
- Maintenance services/inspection and lubrication
- Vehicle operation
- Safety

**Engine**

- Operation
- Engine controls manual, electronic, and shut down
- Emissions controls, DPF, DEF System

**Transmission**

- Description of systems and components
- Operation
- Maintenance services/inspection and lubrication
- Service requirements (proper methods and intervals)
- Controls (manual, electronic, if equipped)
- Integrated emergency warning system
- PTO (operation, maintenance services, inspections, and lubrication)
- Split shaft PTO operation (if equipped)

**Brakes and Air Supply System**

- Description of systems and components
- Operation
- Maintenance services, inspection and lubrication of components
- Warning devices and troubleshooting
- Anti lock system if equipped

**Body and Components**

- Lubrication and operator adjustments (if applicable)

## **Hydraulic Systems**

- Description of systems and components
- Operational controls (manual, electronic and automatic sequencing)
- Maintenance services/inspection
- Operator solutions

## **Operator Level Troubleshooting**

- Warning lights and work lights - breaker reset

## **6.66. Vehicle Documents and Certificates**

The following documents and certificates are required for each vehicle and shall be provided at the time of delivery:

- Chassis Manufacturer MSO
- Manufacturer's Bill of Materials
- Certificate of vehicle completion
- Odometer Disclosure Statement Form
- Level one inspection by Arizona Motor Vehicle Division
- Fleet Services Division, Warranty checklist (form provided)
- Fleet Services Division, Pre-Delivery checklist (form provided)
- Monroney label (window sticker)
- Proof of Delivery (must obtain authorized City representative signature and date at time of delivery)

Vehicle delivery will not be considered complete until all required documents are provided, any or all of which, if required to obtain tax exempt license, shall be furnished to the consignee at the time of delivery.

## **6.67. Vehicle In-Service Notification**

Vehicles not placed in service immediately upon receipt shall be warranted from the date the vehicle is placed in service. The Fleet Services Division shall notify the Contractor in writing of the actual in-service date. The in-service date shall not be more than six months after delivery of acceptable vehicles. Delayed warranty forms shall be provided by the Contractor with all vehicles.

## **6.68. Vehicle Price**

All prices submitted shall be firm and fixed for the initial current vehicle model year contract period. Thereafter, price adjustments will be considered annually provided the adjustments are submitted in writing with a 60-day advance notice. Requests shall be accompanied with written

documentation from the manufacturer confirming the price increase. The City will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to the Procurement Officer on the front page of the solicitation, with the solicitation # referenced. Price increases agreed to by any staff other than the Chief Procurement Officer are invalid. The Contractor acknowledges and agrees that it will repay all monies paid as a result of a requested price increase unless the price increase was specifically approved in writing by the Chief Procurement Officer.

### 6.69. Warranty - Fleet Services

At a minimum all vehicles supplied shall be fully warranted by the manufacturer against mechanical and electrical defects for a minimum of n/a factory warranty from the delay in warranty service date and meter reading. This warranty shall at a minimum cover items such as, but not all inclusive of, actual repair labor, travel time and mileage parts, transportation charges to and from the nearest repair service facility or other designated repair depot. Any defects of design, workmanship or material, shall be fully corrected by the Contractor and/or manufacturer with no cost to the City. Written warranty shall be included with the delivered vehicles.

### 6.70. Warranty Policy

All warranties are to cover parts, labor and taxes. The City reserves the right to perform in house warranty repairs with the ability to be reimbursed for parts, labor and taxes. The City does not intend to be the sole warranty provider and may elect to send certain warranty repairs to the Contractor.

The current labor reimbursement rate for is n/a per hour, or industry standard if left blank. However, the labor reimbursement rate will not exceed the manufacturer's current established warranty reimbursement rate. The warranty period will begin from the delayed in service date reported by the City.

The Contractor must establish a 24 hour a day, seven days a week pre-approval authorization process for warranty repairs if pre-authorization is required. The Contractor will honor all parts purchased through them or their designated parts supplier as warrantable parts. Whole unit and component warranty terms must be specified when the Offer is submitted. Any Offer submitted without these terms will be deemed as non-responsive.

One electronic copy if available or one hard copy of the labor guide for warranty repairs must be supplied with the delivery of each vehicle model or one master copy per manufacturer. It is the Contractor's responsibility to make sure all the above conditions are met.

## **7. Defense and Indemnification**

### **7.1. Standard General Defense and Indemnification**

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

### **7.2. Environmental Services or Operations**

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney fees, expert fees, and reasonable expenses of investigation and remedial work (including but not limited to investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Hazardous Substance that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as “Losses”) to the extent that such Losses are caused by the fault of Indemnitor, its officers, officials, members, managers, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. As used in this section: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic



pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) "Fault" means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Hazardous Substances, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

## **8. Insurance Requirements**

### **8.1. Contractor's Insurance**

Permittee must procure and maintain, for the duration of this Permit, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Permit by the Permittee, its agents, representatives, employees or contractors.

The City in no way warrants that the limits stated in this section are sufficient to protect the Permittee from liabilities that might arise out of this Permit by the Permittee, its agents, representatives, employees or contractors and Permittee may purchase additional insurance as they determine necessary.

### **8.2. Scope and Limits of Insurance**

Permittee must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

### **8.3. Commercial General Liability – Occurrence Form**

General Aggregate \$2,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Permittee related to this Permit.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Permittee.
- The Permittee's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

### **8.4. Notice of Cancellation**

For each insurance policy required by the insurance provisions of this Permit, the Permittee must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to [procurement@phoenix.gov](mailto:procurement@phoenix.gov).

## 8.5. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Permittee from potential insurer insolvency.

## 8.6. Verification of Coverage

Permittee must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Permit. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City prior to the issuance of this Permit. Each insurance policy required by this Permit must be in effect at or prior to issuance of this Permit and must remain in effect for the duration of the Permit. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal will be grounds for immediate revocation of this Permit.

All certificates required by this Permit must be sent directly to the City at the address set forth herein. **The Permit number must be provided on the certificate of insurance.** The City reserves the right to review complete copies of all insurance policies required by this Permit at any time.

## 8.7. Approval

Any modification or variation from the insurance coverages and conditions in this Permit must be documented by an executed amendment to this Permit.

## 9. Submittals

### 9.1. Copies

#### **For In-Person and Carrier Delivery**

If submitting a hardcopy offer to the City, please submit one original, 1 copy, and one electronic copy (portable thumb drive) of the Submittal Section and addenda(s). Please include updated W-9, a sample invoice and all other required documentation.

#### **For Electronic Submittal via email**

If submitting an electronic offer to the City via email, please submit one copy of the Submittal Section and addenda(s). Please include an updated W-9, a sample invoice and all other required documentation.

**Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the opening date, and is irrevocable unless it is in the City's best interest to release offer(s).

**Please DO NOT submit links to Google Docs, Dropbox Paper, or similar services. Your offer may be deemed non-responsive if your offer is supplied utilizing these services.**

#### **Additional required documentation to be included with submittal:**

Offeror will submit documentation on the below items for employees who will be providing services under any resulting contract:

#### **• List certifications required**

### 9.2. Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The written offer should be:

- Typewritten for ease of evaluation
  - Signed by an authorized representative of the Offeror
  - Submitted with contact information for the individual(s) authorized to negotiate with the City
- A. Offeror's Proposal - A detailed proposal describing the firm or individual's qualifications and experience responsive to the requirements of the solicitation and evaluation criteria.
  - B. Pricing Proposal - A completed pricing proposal with all requested prices, quantities, and/or discounts completed.
  - C. Submittal Forms - All submittal forms are completed and signed.

D. Addenda - Signed copies of all published addenda.

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred. Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.

### 9.3. Additional Quantities

By signing and submitting this solicitation, Offeror agrees that the City may, at any time prior to February 28, 2025, purchase additional quantities up to and including 100 percent of the quantities specified at these solicitation prices and conforming to solicitation specifications.

**OR**

The City anticipates considerable activity under the resultant contract(s). However, no guarantee can be made as to actual operation of the 27th Avenue Compost Facility and marketing of the finished compost, that will be purchased under this contract. The City reserves the right to add, change or delete quantities or items as circumstances may require.

Note: Offers taking exception to this option for additional quantities clause shall indicate in their offer.