

SEWER LINE CHEMICAL ROOT CONTROL

TECHNICAL SPECIFICATIONS

TABLE OF CONTENTS

1. General
2. Contractor Responsibilities
3. Guarantee
4. Composition of the Chemical Root Control Material
5. Manner of Application
6. Property Damages Caused by the Contractor
7. Protection of Wastewater Treatment Plant
8. Pollution and Liability Insurance
9. Compliance with Laws
10. Qualifications
11. Assistance Provided by the Owner
12. Contract Period
13. Payment
14. Substitutes and Proven Equivalents

Attachments to be submitted with bid proposal

Proposal Price Page
Contractor's Business & Applicator Qualifications Page
Contractor's Reference Page

General Bid Terms and Conditions

Section 2 through 4 (Section 1 Intentionally Omitted)

SEWER LINE CHEMICAL ROOT CONTROL

TECHNICAL SPECIFICATIONS

1. GENERAL

The purpose of the project specified herein is to apply chemical root control agent to sanitary sewers, in order to kill the root growth present in the lines and to inhibit re-growth, without permanently damaging the vegetation producing the roots. The chemical agent shall be Razorooter II™ or equivalent products approved by the Owner in writing **prior to the bid date**.

The submission of the bid shall be considered as prima-facie evidence that the Bidder (a.k.a., the Contractor) has familiarized himself with and understands all the conditions under which the Contract is to be awarded, performed, and administered. **No letter, stipulation, or exception submitted with a bid shall be accepted.**

2. CONTRACTOR RESPONSIBILITIES

The Contractor's attention is drawn to the following terms, conditions and responsibilities:

- a. Bidders must be licensed with the Arizona Department of Agriculture **prior to the bid date**. All bidders must have a minimum level of pesticide application experience, (see section 10), and employ a State Certified pesticide applicator on the job site at all times.
- b. Contractor shall provide Pollution Liability Insurance; in addition to all other insurance specified herein (see section 8).
- c. The Contractor shall provide a money-back guarantee on all work specified herein as set forth below (see section 3).
- d. The Contractor is responsible for all property damage and for all clean up and restoration associated with any chemical spill. (See section 6). The Contractor is not responsible for any damages caused by sewer stoppages.
- e. Where work is located in high-traffic areas, the Contractor shall place proper traffic warning devices to protect the specific job site and to prevent accidents or personal injury to the public.
- f. The Contractor shall use a reduced-pressure-zone backflow prevention device whenever accessing fresh water for mixing chemical.
- g. The Contractor shall return every 4 to 8 months throughout the life of the guarantee, in order to evaluate the success of the project, and to arrange any free guarantee work that may arise.
- h. The Contractor shall comply with all Federal, State and Local Laws, with special attention to those laws that pertain to the handling, transportation, and use of any hazardous materials, and disposal of all pesticide containers.

3. GUARANTEE

For each sewer section (manhole-to-manhole) that is treated under the Contract, the Contractor shall guarantee the work as follows. At the option of the Owner, the Contractor shall, at his own expense, **re-treat a sewer section, or refund 100% of the payment received to treat that section**, in the event that: (1) live roots are found in the section within six months after the application; or, (2) the section plugs up and floods due to tree root obstructions within a period of two years, beginning on the date of treatment, and ending two years after the date of treatment. Re-treatments, performed at no charge in honor of the guarantee, do not extend the expiration date of the guarantee.

The guarantee applies to sewer stoppages caused by live tree roots. It does not apply to stoppages caused by grease or other foreign matter; flat, collapsed or deformed pipe; or flooding caused by a surcharged or plugged sewer section downstream from a guaranteed sewer section. This guarantee applies to main line sewers only. The Contractor is not responsible for any damages caused by main line sewer stoppages, regardless of cause. The decision of the Owner as to the cause of stoppage is binding.

4. COMPOSITION OF THE CHEMICAL ROOT CONTROL MATERIAL

The chemical root control agent shall be Razorooter™ II or equivalent product that is approved by the Owner in writing prior to the Bid Opening. The chemical root control agent shall be registered with the EPA and the Arizona Department of Agriculture, **prior to the bid opening**, and shall be labeled for use in sewers to control tree roots. The chemical Root control agent shall contain an active ingredient for controlling sewer roots and deterring their re-growth. There shall also be a surfactant system to deliver the active ingredient (herbicide) to the target root tissue.

A. Active ingredient:

1. Shall be a Category "E" compound, the most favorable rating attainable on the U.S. EPA's chronic exposure toxicological rating scale.
2. Shall **not** be considered a carcinogen, teratogen, mutagen, or oncogene, based on laboratory testing.
3. Shall carry a "signal work" assigned by the U.S. EPA of either "Warning" or "Caution", on the product label. **Pesticides carrying the signal word "Danger" shall not be accepted.**
4. Shall be non-volatile in order to minimize exposure to workers and other individuals by inhalation.
5. Shall not be readily absorbed through the skin.
6. Products containing the active ingredient(s) metam-sodium or copper sulfate are not allowed.

Surfactant system:

1. Shall produce a dense, small bubble, clinging foam, which sustains its shape for a minimum of one hour.
2. Shall enhance the penetration of herbicide into root masses.
3. Shall contain an Alkylpolyglucoside (formulations of vegetable oil and carbohydrate from agricultural products).
4. Surfactants designed to foam chemically, upon contact with water, **shall not be accepted** (see section 5 below).

5. MANNER OF APPLICATION

All work shall be performed according to label instructions and in accordance with the best recommended practice for conditions present in the line under treatment. All applications shall be done by foaming or other methods as provided on the product label.

The application of material shall be performed in such a way as to contact roots within the primary main line sewer to be treated. Effort will also be made to penetrate secondary lateral sewers in order to contact roots residing in the “wye” connections. The foam shall be generated through the use of air injection equipment, and the foam shall be pumped into the sewer under pressure – as a foam. Foam quality shall be sufficient to penetrate “wye” connections, effectively treat large diameter pipe and to enhance treatment effectiveness overall. Therefore, applications of chemicals designed to generate foam “chemically” on contact with water shall not be accepted.

Hydraulic sewer cleaning machines will reduce treatment effectiveness by damaging root growths and inhibiting their uptake of chemical. Hydraulic sewer cleaning machines shall not be used prior to, or during treatment process.

6. PROPERTY DAMAGES CAUSED BY THE CONTRACTOR

Should the Contractor or his employees cause any damage to public or private property, the Contractor will be required to make repairs immediately. The Owner may, however, elect to make repairs or replacements of damaged property and deduct the cost of such from moneys due or to become due the Contractor under this Contract with the Owner. The Contractor shall not be responsible for any damages caused by sewer stoppages.

7. PROTECTION OF WASTEWATER TREATMENT PLANT

The Contractor shall take all steps necessary and appropriate to prevent adverse effects on wastewater treatment plant processes during the application process.

Notwithstanding the requirement that the active ingredient shall not adversely effect wastewater treatment plant processes, (see section 4.B), in the event that a wastewater treatment plant experiences any reduction in operating efficiency during the execution of the Contract, the Contractor shall immediately suspend all applications, at the direction of the Owner. The Contractor shall continue operations only after problems at the wastewater treatment plant have been corrected, satisfactory to the Wastewater Treatment Plant Operator.

The Contractor shall have in his possession, and make available to the Owner on request, a recent study from an accredited research facility documenting the effects of the product on wastewater treatment plant facilities. At a minimum, this study shall address the toxicity of the product on wastewater treatment plant biota, including nitrifiers and denitrifiers, the toxicity of the product on treatment plant effluent, and the environmental fate of the product. This requirement is mandatory.

8. POLLUTION AND LIABILITY INSURANCE

The Pollution Liability Insurance described herein is **in addition to** all other insurances required of the Contractor by the Owner, including any insurance described in the general conditions, any insurance required by law, or any other insurance requested by the Owner.

At the time of the bid opening, the Contractor shall submit written evidence that he has obtained pollution liability coverage. This coverage shall protect the Contractor, the Owner, and the Owner's officers, agents and employees from claims for damages for bodily or personal injury, sickness or disease, including death, and from claims for damages to property and/or the environment, which may arise directly out the use of chemicals and/or pollution. The minimum amount of such insurance shall be \$5,000,000 total loss. An "A" rated insurance company shall provide the Contractor's Pollution liability insurance.

In addition, the Contractor's commercial general liability limits must be not less than \$10,000,000, total occurrence limit, and include pesticide or herbicide applicator coverage.

9. COMPLIANCE WITH LAWS

The Contractor is directed to ensure compliance with all Federal, State and Local ordinances pertaining to the type of work specified herein. Particular attention shall be paid to those laws and ordinances relating to transportation of material (DOT), the application of sewer root control herbicides (US EPA), and traffic safety regulations. The Contractor's Federal DOT number and material EPA registration number must be submitted with bid.

10. QUALIFICATIONS

The Contractor shall demonstrate a minimum level of five (5) years direct experience in applying chemical sewer root control agents. The Contractor must have performed at least 10 other jobs similar in size and scope to the work specified herein, and have treated in excess of 750,000 linear feet of sanitary sewer. Any work performed by subcontractors for the Contractor will not be considered.

The Contractor shall be licensed as a pesticide application business with the Arizona Department of Agriculture **prior to the bid opening**. Contractors who do not meet the experience and other qualifications specified herein shall not be considered for award of the contract. **Each bidder is required to submit with his bid the contractor qualification form attached to these specifications.** Additional references, up to ten, may be requested by the Owner.

All work shall be performed by Certified Pesticide Applicators licensed with the Arizona Department of Agriculture. Certified Pesticide Applicators shall have a minimum three years experience in performing the type of work specified, and shall each have personally performed a minimum of 500,000 linear feet of treatments as a Certified Pesticide Applicator and/or under the direct supervision of a Certified Pesticide Applicator. A minimum of three Certified Pesticide Applicators that are registered with the Arizona Department of Agriculture, prior to the bid, is required. License numbers for these three applicators shall be submitted with the bid.

11. ASSISTANCE PROVIDED BY THE OWNER:

- a. A representative of the Owner will accompany the Contractor's crew, and/or sewer system drawings will be provided showing the exact locations of the pipes to be treated.
- b. The Owner shall provide for the entering of private lands, public lands and right-of-ways.
- c. The Owner shall provide a source of fresh water at a location or locations to be designated by the Owner.
- d. The Owner shall locate and uncover hidden or buried manholes, and restore street surfaces, easements, etc.

12. CONTRACT PERIOD

The initial term of the Contract shall be for the period of one year. The Contract may be extended for additional one-year periods up to a total of three additional years, with the mutual consent of the Owner and Contractor. Price changes for succeeding years shall be adjusted in accordance with the consumer price index for the Owner's locale.

13. PAYMENT

Payment to the Contractor shall be made only after all work specified by the Contract has been completed to the Owner's satisfaction, and all reports and submittals requested by the specifications or the Owner have been received by the Owner.

14. SUBSTITUTES AND PROVEN EQUIVALENTS

Use of any substitute or equivalent procedures, methods, or materials must be approved by the Owner in writing **prior to the bid date**.

Should the Contractor wish to use any brand of material other than as specified herein, he shall submit to the Owner for review, complete descriptive literature naming the proposed substitution and manufacturer. An equivalent material or methods shall comply with the requirements set forth above (see section 4 COMPOSITION OF ROOT-CONTROL MATERIAL, and section 5 MANNER OF APPLICATION).

PROPOSAL PRICE PAGE
(Submit with Bid)

Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of each size pipe. Unit prices are to be computed per linear foot manhole-to-manhole.

PIPE SIZE	UNIT PRICE PER LINEAR FOOT	ESTIMATED FOOTAGE	EXTENDED PRICE
6 inch		15,000	
8 inch		65,000	
10 inch		100	
12 inch		100	
18 inch		100	
Total Price (in figures)			

(Total Price in words) _____

The Owner reserves the right to reject any or all bids. Bidders are cautioned not to attach any conditions, limitations, or provisions to the proposal as such conditions, limitations or provisions will render their bid informal and cause its rejection.

Submittals: Failure to enclose the following will render this bid non-responsive and result in the rejection of this bid.

- _____ - Specimen Label with MSDS
- _____ - Pollution Liability Insurance Certificate
- _____ - Contractor's Qualification Page
- _____ - Contractor's Reference Page
- _____ - Contractor's Confined Space Entry Employee Certificates (2 minimum)

CONTRACTOR'S QUALIFICATION PAGE
(Submit with Bid)

Failure to complete this page in full, and to provide valid, existing licenses and insurance, as required, will render this bid non-responsive and result in the rejection of this bid.

Contractor's Name: _____

Contractor's Arizona Pesticide Business License #: _____

Contractor's Federal Department of Transportation #: _____

Name of Proposed Chemical Root Control Agent: _____

USEPA Root Control Agent Registration #: _____

Arizona Root Control Product Registration #: _____

Does the Contractor have Pollution Liability Insurance as specified? _____

Contractor's Pollution Liability Insurance carrier: _____

What is the AM Best rating for your Pollution Insurance carrier? _____

Does the Contractor have a minimum 5 years of experience in the type of work specified, treated in excess of 750,000 lineal feet of root treatments, and completed at least 3 other jobs similar in size and scope, which the Owner can verify? _____

Are two (2) copies of Contractor Employee Certificates of Completion in confined space entry training, per federal code 29 CFR 1910.146 attached? _____

Does the Contractor have a recent study documenting the effects of the product on wastewater treatment plants? _____

Contractor's Arizona Certified Pesticide Applicators
(List 3 minimum)

1. Name: _____ Certification #: _____

2. Name: _____ Certification #: _____

3. Name: _____ Certification #: _____

BIDDER'S REFERENCE PAGE
(Submit with Bid)

The Contractor shall submit municipal references for chemical sewer root control work, which the Owner can verify. Each reference shall be for work actually performed by the Bidder. All references shall pertain to actual root control work performed by the Bidder (sub-contractor references are not applicable). Reference work shall have been performed with the manner of application specified herein. Submit sufficient references on a project by project basis; so that the completed work in total for said municipalities exceeds the specified limit of 500,000 lineal feet of root treatments (minimum of three).

ALL REFERENCES WILL BE TREATED AS THE CONTRACTOR'S CONFIDENTIAL BUSINESS INFORMATION. Previous work for the Owner may be used as references. Complete each item for all 3 references.

Owner/Agency:	
Address:	
Address:	
City, State, Zip:	
Contact:	
Phone:	

Owner/Agency:	
Address:	
Address:	
City, State, Zip:	
Contact:	
Phone:	

Owner/Agency:	
Address:	
Address:	
City, State, Zip:	
Contact:	
Phone:	

TOTAL FOOTAGE TREATED _____

Only Contractors experienced in this type of work will be considered. Failure to provide sufficient verifiable references whose total work exceeds 750,000 linear feet will result in rejection of this bid.

GENERAL BID TERMS AND CONDITIONS

2.0 Solicitation Process Requirements

- 2.1. Communications with the City: All communications regarding this solicitation must be directed in writing to the Purchasing Division. Unless authorized by the Purchasing Manager, no other City official or employee is empowered to speak for the City with respect to this solicitation. Bidders are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Bidders are cautioned against contacting any City official or employee other than the Buyer for this solicitation. Failure to observe this requirement may be grounds for rejection of Bidder's bid. The City's buyer for this solicitation is:

Dawn M. Foster, Purchasing Manager
City of Prescott
Purchasing Services Division
Fax: 928-777-1241
E-mail: purchasing@cityofprescott.net

2.2. Schedule

- 2.2.1. Solicitation Advertisement
Monday, April 28, 2008
- 2.2.2. Deadline for Questions
Thursday, May 8, 2008 COB
- 2.2.3. Deadline for Issuance of Addenda via www.cityofprescott.net/business/bids
Monday, May 12, 2008 COB
- 2.2.4. Bids Due (one (1) original and two (2) copies)
Thursday, May 15, 2008 at 2:00 pm
Office of the City Clerk
201 S. Cortez St.
Prescott, AZ 86302
- 2.2.5. Bid Opening
Thursday, May 15, 2008 at 2:00 pm
City of Prescott
City Council Chambers
201 S. Cortez St.
Prescott, AZ 86302

2.3. Questions and Requests for Addenda

Bidders who have questions about or suggestions for changes to this solicitation may direct them to the City's Buyer in writing by fax or email. Questions and requests for addenda must be received by the City's Buyer no later than the date and time listed in Section 2.2. Questions received after this time will not be considered or answered. Failure by a Bidder to request clarification of any inadequacy, omission or conflict shall not relieve the Bidder of the responsibility of being in compliance with the solicitation.

2.4. City Answers and Addenda

Changes to this solicitation will be made only by formal written addenda issued by the City's Buyer. Any such addenda and City answers to questions will be issued no later than the date and time listed in Section 2.2. Addenda and City answers will be posted to the City website at www.cityofprescott.net/business/bids. It is the bidder's responsibility to check the website for any posted addenda prior to submitting his bid.

Changes to this solicitation may be made by the City if, in the sole judgment of the City, the changes will not compromise the City's objectives in this acquisition. All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement.

2.5. Proprietary Material

A Bidder shall clearly mark any proprietary information contained in its bid with the words "proprietary information." Bidder shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a bid as proprietary may result in rejection of the bid. Bidders should be aware that the City is required by law to make its records available for public inspection. The Bidder, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose these materials.

2.6. Multiple Bids

A Bidder may submit multiple bids for any solicitation however, each bid must be submitted separately (in its own complete package) from the others.

2.7. Delivery of Bids

Sealed bids (one (1) original and two (2) copies) must be received at the Office of the City Clerk no later than the date and time listed in Section 2.2. The bids will be opened and read publicly in the Council Chambers at that time.

If the bid is delivered by the U.S. Postal Service, the bid should be addressed to:

Elizabeth A. Burke, City Clerk
City of Prescott
PO Box 2059
Prescott, AZ 86302

If the bid is delivered by an entity other than the U.S. Postal Service, the bid should be addressed to:

Elizabeth A. Burke, City Clerk
City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

Bidder shall enclose bid (one (1) original and two (2) copies) in a sealed envelope. The envelope should identify the Bidder's name, mailing address, Solicitation and Title, and the time and date of opening. The City shall not consider late bids, telegraphic (fax) or telephone bids. Bidder is solely responsible for ensuring that bids are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of bids. Bids received after the deadline will be returned unopened.

2.8. Cost of Bids

The City shall not be liable for any costs incurred by Bidder in the preparation and submittal of a bid(s) in response to the solicitation or in the participation of any part of the acquisition process.

2.9. Errors in Bids

Bidder is responsible for all errors or omission in their bids, and any such errors or omission will not serve to diminish their obligations to the City.

2.10. Withdrawal of Bids

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Section 2.2. No bid may be withdrawn for a period of 120 calendar days after the bid due date and time.

2.11. Changes in Bids

Prior to the bid due date and time listed in Section 2.2, a Bidder may make changes to its bid provided the change is initialed and dated by the Bidder. Corrections and/or modifications received after the closing time specified will not be accepted.

2.12. Rejection of Bids

The City reserves the right to reject any and all bids and to waive any immaterial defects and irregularities in bids.

2.13. Disposition of Bids

All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.14. Incorporation of Solicitation and Response in Agreement

This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful bid shall be binding and shall become obligations of the agreement.

2.15. Protests

Any protest of a notice that a bid is non-responsive must be filed by 5:00 p.m. on the third business day after such notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the Purchasing Manager, PO Box 2059, Prescott, AZ 86302, FAX 928-777-1234. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the Apparent Successful Bidder(s). The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other bidder.

3.0 Standard Contract Terms and Conditions

3.1. Entire Agreement: This contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's RFQ/RFP, all addenda to the RFQ/RFP, and the Contractor's response to the RFQ/RFP are explicitly included in this contract. Where there is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Contract amendment; the Contract; the most recently issued addendum to the City's RFQ/RFP; the City's RFQ/RFP; and the Contractor's response to the RFQ/RFP.

3.2. Term: The term of this Contract shall commence on the date the City's Purchasing Agent signs the same and shall expire as stated within the Contract.

3.3. Freight: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.

3.4. Title: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.

3.5. Overages/Undergoes: Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

- 3.6. Schedule: Unless the City's Purchasing Agent requests a change in schedule, the Contractor shall deliver the items or render the services as stated in the Contract. At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Purchasing Agent of such difficulty and the length of the anticipated delay.
- 3.7. Payment: Invoices will be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefore.
- 3.8. Unlawful Overcharges: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.
- 3.9. Price Warranty: The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.
- 3.10. Warranties: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.
- 3.11. Date Warranty: Vendor warrants that all Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Vendor shall send, at Vendor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.
- 3.12. Equal Employment Opportunity: During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any

sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 3.13. Diversity: The City encourages the Contractor to employ a workforce reflective of the region's diversity.
- 3.14. Discrimination in Contracting: The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
- 3.15. Record-Keeping: The Contractor shall maintain, for at least 12 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.
- 3.16. Publicity: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.
- 3.17. Proprietary and Confidential Information: The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.
- 3.18. Indemnification: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City.
- 3.19. Insurance: The Contractor shall secure and maintain, at all times during the term of this Contract, at its own expense, a policy or policies of insurance known as:
 - 3.19.1. Commercial General Liability written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent including premises/operations, products/completed operations, personal/advertising injury, contractual liability, and independent contractors liability;
 - 3.19.2. If any vehicle is used in the performance of this Contract, a policy of Business Automobile Liability written on an insurance industry standard form (ISO form CA

00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles; and

- 3.19.3. If any work under this Contract will be performed by a resident of the state of Arizona, Worker's Compensation ("Industrial Insurance") as required by the State of Arizona. The insurance as provided under items 3.19.1 and 3.19.2 above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an Additional Insured per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.
- 3.20. Compliance with Law: The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.
- 3.21. Licenses and Similar Authorizations: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.
- 3.22. Taxes: The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.
- 3.23. Americans with Disabilities Act: The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- 3.24. Adjustments: The City's Purchasing Agent at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.
- 3.25. Amendments: Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Purchasing Agent shall be the City's authorized agent.
- 3.26. Assignment: Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.
- 3.27. Binding Effect: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
- 3.28. Waiver: The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- 3.29. Applicable Law: This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.
- 3.30. Remedies Cumulative: Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
- 3.31. Severability: Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.
- 3.32. Gratuities: The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.
- 3.33. Termination:
- 3.33.1. For Cause: Either party may terminate this Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.
- 3.33.2. For Reasons Beyond Reasonable Control of a Party: Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.
- 3.33.3. For Public Convenience: The City may terminate this Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.
- 3.33.4. Notice: Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.
- 3.34. Major Emergencies or Disasters: The following provision shall be in effect only during major emergencies or disasters. The City is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the City is contracting with the Contractor under the following terms and conditions: Contractor shall provide to the City, upon the City's request, such goods and/or services at such time as the City determines. In the event the Contractor is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Contractor, the Contractor shall make such delivery as soon as practicable. If the Contractor is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Contractor shall immediately assist the City in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Contractor is unable to provide such goods and/or services as requested by the City, the Contractor may offer to the City limited substitutions for its consideration and shall provide such substitutions to the City as required above, provided the Contractor has obtained prior approval from the City for such substitution. The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall provide the City with appropriate documentation of the additional costs. The Contractor

acknowledges that the City is procuring such goods and/or services for the benefit of the public. The Contractor, in support of public good purposes, shall consider the City as a customer of first priority and shall make its best effort to provide to the City the requested goods and/or services in a timely manner. For purposes of this Contract, a “major emergency” or “disaster” shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, and loss of any utility service, fire, terrorist activity or any combination of the above.

4.0 Standard Bid Information

- 4.1. Default by Bidder: In case of default by the bidder, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the bidder the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.
- 4.2. Cash Discounts: In connection with any cash discount specified on this bid, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.
- 4.3. Warranty: Manufacturer’s warranties shall remain in effect. All equipment purchased shall be purchased from one (1) vendor. That one vendor shall be fully responsible for all warranty performance relating to any part of component of the purchased equipment. The vendor’s responsibility shall include all warranty involving sub-contractors. The vendor shall supply a warranty on all parts and workmanship from the initial delivery date. The vendor shall guarantee further that the equipment to be supplied complies with all applicable regulations.
- 4.4. Litigation: The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. Neither party shall be entitled to an award of attorneys’ fees, either pursuant to the Contract or another other state or federal statute.
- 4.5. Cooperative Use of Contract: This contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of the contracted vendor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.
- 4.6. Brand Names: Brand names are only used for reference to indicate character or quality desired unless otherwise indicated.