



**City of Prescott  
Solid Waste Hauling Services**

**REQUEST FOR PROPOSALS  
RFP No. 2017-064**

**Specifications**

**and**

**Contract Documents**

Proposals DUE: **Thursday, October 20, 2016 before 2:00 PM**

This Solicitation and any issued addenda are available on the City of Prescott website at <http://www.cityofprescott.net/business/bids/>

## SCHEDULE OF EVENTS

### **Solicitation Advertisement**

Sunday, September 11 and 18, 2016

### **Solicitation Release**

Monday, September 12, 2016

### **Mandatory Pre-Bid Meeting\***

Thursday, September 29, 2016 at 10:00 am  
Solid Waste Transfer Station  
2800 Sundog Ranch Road  
Prescott, AZ 86301

\*Proposers must participate in the walk-through inspection of the site(s) conducted by City personnel and familiarize themselves with any conditions which may affect performance and bid prices. Walk-through inspection tour will begin immediately following the pre-bid meeting.

Any proposals submitted by a proposer who did not attend the mandatory pre-bid meeting will be considered as non-responsive and will be rejected. A sign-in sheet will be routed at the mandatory pre-bid meeting to document attendance.

### **Final Date for Questions**

Questions will not be accepted after Wednesday, October 12, 2016 at 10:00 am

### **Bid Due**

Thursday, October 20, 2016 before 2:00 pm (local time)  
City of Prescott  
City Clerk's Office  
201 South Cortez Street  
Prescott, Arizona 86303

### **Bid Opening**

Thursday, October 20, 2016 at 2:00 pm (local time)  
City of Prescott  
Council Chambers  
201 South Cortez Street  
Prescott, AZ 86303

**TABLE OF CONTENTS**

Schedule Of Events.....2  
Proposal Response Checklist.....4  
Definitions.....5  
INTRODUCTION.....9  
SECTION 1: INSTRUCTIONS.....9  
SECTION 2: PREPARATION OF PROPOSAL.....10  
SECTION 3: PROPOSAL FORMAT.....11  
SECTION 4: EVALUATION REQUIREMENTS.....11  
SECTION 5: PROPOSAL RESULTS.....14  
SECTION 6: AWARD OF CONTRACT.....14  
SECTION 7: SCOPE OF WORK.....15  
SECTION 8: GENERAL TERMS AND CONDITIONS.....27  
SECTION 9: FORMS A-G.....40  
SUPPLIER AGREEMENT.....48

## PROPOSAL RESPONSE CHECKLIST

Check off each of the following as the necessary action is completed.

- 1. All forms have been signed. All of Section Nine, Forms, are included.
- 2. The prices offered have been reviewed.
- 3. The price extensions and totals have been verified.
- 4. Any required drawings or descriptive literature has been included.
- 5. If required, the amount of the bid surety has been verified and the surety has been included.
- 6. Insurance requirements have been reviewed to assure you are in compliance.
- 7. The specified number of copies of your proposal has been included.
- 8. Any addenda have been signed and are included.
- 9. The sealed proposal has been addressed to:

City of Prescott  
City Clerk's Office  
201 South Cortez Road  
Prescott, AZ 86301

The mailing envelope clearly shows your company name and address, solicitation number, and proposal opening date.

- 10. If mailing, the response will be mailed in time to be received no later than 2:00 p.m. local Arizona time on the due date indicated.
- 11. Request for Consideration of Alternate Terms are included, if applicable.

## DEFINITION OF KEY WORDS USED IN THIS REQUEST FOR PROPOSAL

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

<b>Shall, Will, Must:</b>	Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.
<b>Should:</b>	Indicates something that is recommended but not mandatory. If the Proposer fails to provide recommended information, the City may, at its sole option, ask the Proposer to provide the information or evaluate the offer without the information.
<b>May:</b>	Indicates something that is not mandatory but permissible.
<b>A.R.S.</b>	Arizona Revised Statute
<b>Accident</b>	An unplanned event that results in injury to a person or damage to property or equipment or a disruption of service.
<b>Addendum</b>	The formal written notice of additions, deletions, modification or explanations of RFP documents from the Contract Specialist to Proposers.
<b>Amendment</b>	A written document issued by the City and signed by the Contractor which alters the contract and identifies the following: (i) a change in the Work (ii) a change in the Contract Amount (iii) a change in the time allotted for performance and/or (iv) an adjustment to the Agreement terms.
<b>Backhauling</b>	Backhauling material from disposal sites to the Sundog Transfer Station, or other Destination Facilities.
<b>Chargeable Damage</b>	Damage caused by the City to the Contractor's Trailer while loading the Trailer with Materials where such damages are not caused by normal wear and tear. Damage must result from the direct impact of loading equipment and cannot result from material impact alone. The incident must be reported immediately to the City prior to the vehicle leaving the City facility.
<b>City</b>	City of Prescott
<b>City Facility</b>	Sundog Transfer Station, 2800 Sundog Rd., Prescott, AZ 86301
<b>Combination</b>	Tractors and Transfer Trailers that are used in the performance of the service.
<b>Commencement Date</b>	The date on which the Contractor shall begin operations in accordance with the Notice to Proceed.
<b>Consumer Price Index</b>	The Western Region Consumer Price Index for Statistics (BLS), US Department of Labor will be used for ton price adjustments. The Consumer Price Index Average Price Data for Automotive Diesel Fuel will be used to adjust fuel prices.
<b>Contract Specialist</b>	City of Prescott contract contact person per this solicitation.

<b>Contract Year</b>	The date commencing with the Commencement Date and continuing for the twelve (12) month period thereafter, including each subsequent twelve (12) month period thereafter.
<b>Contractor</b>	The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Prescott.
<b>Contract/Agreement</b>	The legal agreement executed between the City and the Contractor.
<b>Contract Representative</b>	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.
<b>Days</b>	Means calendar days unless otherwise specified.
<b>Destination Facility</b>	Any facility to which Materials are hauled by the Contractor as designated by the City. Such facilities may include landfills, transfer stations, waste-to-energy plants, or material recovery facilities.
<b>Effective Date</b>	The date the Contract is made and entered into between the Parties.
<b>Employer</b>	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).
<b>EPA</b>	Environmental Protection Agency
<b>Equipment</b>	Tractors, Transfer Trailers, and any other equipment that is necessary or required for the Contractor to perform Services.
<b>Fuel Price Compensation</b>	Fuel Price compensation is calculated by multiplying the Fuel Price by the net weight of the load in tons.
<b>GWL</b>	Gray Wolf Landfill
<b>Haul or Hauling</b>	The Contractor's transportation of Materials using Equipment.
<b>Hopper</b>	The opening in the floor of the Transfer Station through which Materials are directed for the top loading of a Transfer Trailer that is in alignment below the opening.
<b>Hot Load</b>	Materials delivered which are emitting smoke, fire or fumes and may be in danger of fire or explosion.
<b>Managing Representative</b>	An employee of the Contractor with the ability to make personnel, financial and contracting decisions on the Contractor's behalf, such as a local operations manager, service coordinator, etc.
<b>Materials</b>	Any Solid Waste and/or Recyclable Materials, and other such materials as may be hauled from time to time.

<b>Notice to Proceed</b>	A written notice to the Contractor issued by the City stating the date on which the Contractor is to begin Services (the Commencement Date). The date set forth in this notice shall be considered as the official starting date, and the Contract term shall be computed from this date.
<b>NGTS</b>	North Gateway Transfer Station, 30205 North Black Canyon Hwy, Phoenix, AZ 85085
<b>Offer</b>	Means bid, proposal or quotation.
<b>Proposer</b>	Any individual, firm, partnership, corporation, or association, licensed or otherwise authorized by law to do business in Arizona submitting a Bid for the Services, acting directly or through a duly authorized representative. A vendor who responds to this Request for Proposal.
<b>Performance Bond</b>	The guarantee of the Contractor's performance of the Services as specified in the Contract. Also known as "Bid Surety".
<b>Proposal</b>	A properly signed and written offer of the Proposer to perform the Services and to furnish the labor, materials, and equipment and prices as described herein.
<b>Recyclables</b>	Solid waste that has been set aside or separated from other solid waste for the purpose of being collected and recycled and which is, at the City's discretion, acceptable recyclable material. " <i>Acceptable recyclable material</i> " may include the following materials if clean and dry: paper, cardboard, chipboard, plastic containers made from polyethylene terephthalate ("PETE") or high density polyethylene ("HDPE"), steel food cans, aluminum cans, disposable aluminum bakeware, aluminum foil and other materials determined by the City as being marketable.
<b>Safety Plan</b>	The safety plan prepared by the Contractor.
<b>Services</b>	The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the Contract and the carrying out of all duties and obligations imposed by the Contract.
<b>Service Coordinator</b>	A person designated by the Contractor and/or a person designated by the City for the purpose of overseeing the Services and coordinating communication between the City and the Contractor.
<b>Solicitation</b>	Means this Request for Proposal (RFP).
<b>Solid Waste</b>	Means trash and recyclables, collectively.
<b>Source Facility</b>	Any facility where Materials are received and Hauled from the Contractor as designated by the City. The primary Source Facility is the Sundog Transfer Station.
<b>Subcontractor</b>	An individual, firm, partnership, corporation, limited liability company, joint venture, or any other business entity having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor, of any tier for the performance of any part of the Agreement. When the City refers to Subcontractor(s) in this document, for the purpose of this Agreement and unless otherwise expressly stated, the term

“Subcontractor” includes, at every level, and/or tier, all subcontractors, sub-consultants, suppliers and material men.

<b>Sundog Transfer Station</b>	The real and personal property, buildings and equipment owned by the City located at 2800 Sundog Road, Prescott, AZ, where the City operates a Solid Waste Transfer Station.
<b>Suppliers</b>	Firms, entities or individuals furnishing goods or services directly to the City.
<b>Term</b>	The term of this Contract.
<b>Ton</b>	Two thousand (2,000) U.S. pounds.
<b>Ton Price Compensation</b>	Ton Price Compensation is calculated by multiplying the Ton Price by the net weight of the load in tons.
<b>Tractor</b>	The tractors used in Hauling Transfer Trailers as described in this Contract.
<b>Transfer Station</b>	That portion of the Source Facility where Materials are caused to be placed into Transfer Trailers for Hauling to a Destination Facility.
<b>Transfer Trailers</b>	The trailers used to haul Materials as described in the Contract.
<b>Transfer Tunnel</b>	The area located directly underneath the Hopper where Transfer Trailers are parked at the Transfer Station for loading purposes.
<b>Trash</b>	All wastes (except medical wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned, wrecked or junked vehicles, or parts thereof, and containable rubbish, filth, construction and demolition waste, brush, bulk waste, metal goods and prohibited substances.
<b>Vendor</b>	A seller of goods or services.
<b>Zero Floor Volume</b>	A requirement that no tonnage remains on the Transfer Station floor at the close of business.

## INTRODUCTION

The City of Prescott Solid Waste Division is seeking qualified contractors to provide hauling services for solid waste and recyclables from the City's Sundog Transfer Station to solid waste disposal and recycling facilities. The successful supplier must demonstrate that they have sufficient capabilities and available resources to meet the service requirements and specifications of this solicitation.

The City of Prescott is preparing a hauling services cost estimate for comparison to proposals received. The cost estimate will be sealed and confidential, and it will be opened and announced at the bid opening. If it is found to be advantageous and in the best interest of the City to manage these services internally, all proposals may be rejected at the sole discretion of the City.

## SECTION 1: INSTRUCTIONS

The City's contact for this solicitation is:

Pam Risaliti, C.P.M., CPPB  
Contract Specialist  
City of Prescott  
432 North Virginia Street  
Prescott, AZ 86301  
[pam.risaliti@prescott-az.gov](mailto:pam.risaliti@prescott-az.gov)  
(P) 928-777-1659  
(F) 928-771-0645

All communications regarding this solicitation must be directed in writing via fax or e-mail to the Contract Specialist. Unless authorized, no other City official or employee is empowered to speak for the City with respect to this solicitation. Proposers are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Proposers are cautioned against contacting any City official or employee other than the Contract Specialist for this solicitation. The City of Prescott will not be held responsible for any verbal instructions. Failure to observe these requirements may be grounds for rejection of the proposer's bid.

Proposal shall be submitted in a sealed envelope or package. Three (3) entire sets of the response shall be submitted, with one (1) marked as "original". All Proposals must be in writing and completed in ink or typewritten. Oral, facsimile, e-mail or computer data transfer proposals will not be accepted.

All Proposals must be received at the City Clerk's Office on or before the due date and time listed. Proposals received after this time will be returned unopened.

Thursday, October 20, 2016 before 2:00 pm  
City of Prescott  
City Clerk's Office  
201 South Cortez Street  
Prescott, AZ 86303

Proposals must be submitted in a sealed envelope or package with the following information clearly noted on the outside of the envelope or package:

- Proposer's Name
- Proposer's Address
- RFP Number
- RFP Title

## **SECTION 2: PREPARATION OF PROPOSAL**

**2.1** All forms provided in Section Nine-Forms must be completed and submitted with your proposal. It is permissible to copy Section Nine forms if necessary. Erasures, interlineations, or other modifications of your proposal shall be initiated in original ink by the authorized person signing the proposal. No proposal shall be altered, amended or withdrawn after the specified proposal due time and date. The City is not responsible for Proposer errors or omissions. All time periods stated as a number of days shall be calendar days, unless otherwise specifically outlined.

Any deviation from this solicitation shall be clearly stated and identified in a separate section titled, "Request for Consideration of Alternate Terms", and must be included with your proposal. Submission of additional terms, conditions or agreements with your proposal may result in rejection of your proposal.

**2.2** It is the responsibility of all Proposers 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 a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time. Proposers 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 Proposer knowledge and observations with the RFP document and other related data.
- c) Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which Proposer has discovered in or between the RFP document and such other related documents.

**2.3** 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 Proposer 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.

**2.4** Proposers are reminded that the specifications stated in the solicitation are the minimum level required and that proposals submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Proposals offering less than the minimums specified are not responsive and should not be submitted.

**2.5** Proposal responses submitted for products considered by the Proposer 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. Proposals 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.

**2.6** If provisions of the detailed specifications preclude an otherwise qualified Proposer from submitting a proposal, a written request for modification must be received by the Contract Specialist at least ten (10) calendar days prior to the proposal opening. The City may issue an addendum to this solicitation of any approved specification changes.

**2.7** Prices shall 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 shall prevail unless obviously in error.

**2.8** Prices offered shall not include state and local taxes. For the purposes of determining the lowest cost, the City will not take tax into consideration. If applicable, taxes must be listed as a separate item on all invoices.

**2.9** The City shall not be responsible for any oral instructions made by any employees or officers of the City in regard to the bidding instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum, which will be available at <http://www.prescott-az.gov/business/bids/>. The Proposer shall acknowledge receipt of an addendum by signing and returning the document with the proposal submittal.

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

**2.11** At any time prior to the solicitation due date and time, a Proposer (or designated representative) may withdraw the proposal by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

### **SECTION THREE: PROPOSAL FORMAT**

**3.1** The written proposal shall be signed by an individual authorized to bind the Proposer. The proposal shall provide the name, title, address and telephone number of individuals with authority to contractually bind the company and who may be contacted during the period of the contract. All prices quoted shall be firm and fixed for the first year of the contract period. Each response shall be:

- a. Typewritten for ease of evaluation.
- b. Submitted in an 8½ x 11 inch loose leaf three-ring binder.
- c. Set forth in the same sequence as this RFP (i.e., Proposers should respond to this RFP in sequence and each response should reference the applicable section of this RFP).
- d. Signed by an authorized representative of the Proposal.
- e. Submitted with the name(s), title, address, and telephone number of the individual(s) authorized to negotiate a contract with the City.
- f. Organized in the following major sections:

- 1. Price Proposal**
- 2. Experience/Past Performance**
- 3. Operations Plan**
- 4. Transition Plan**

Any proprietary information shall be clearly separated and marked as an attachment to the Submittal. However, the proposer agrees to be bound by the provisions of Section 8.2.2 of this document. Proposer shall submit exceptions to the terms and conditions and be accompanied with the Proposer's alternate terms in writing within the proposal in order to be considered. The City of Prescott will be the sole judge in determining the allowable terms and will be posted as an addendum.

Please submit three (3) entire sets of the response, (1) original, and two (2) complete copies. Please do not submit an entire copy of the RFP document. Proposals will remain in effect for a period of 180 calendar days from the bid opening date and are irrevocable unless it is in the City's best interest to do so.

### **SECTION FOUR: EVALUATION REQUIREMENTS**

#### **4.1 PRICE PROPOSAL**

##### **4.1.1 TON AND FUEL PRICE (350 Points)**

Proposers shall submit prices in accordance with the Price Sheet included herein in Section Nine-Forms. This Price Sheet represents the City's official request for price quotation and **MUST** be completed by the Proposer. The pricing stated herein must be a firm fee for a one-year contract

period. Unless otherwise and specifically provided within the proposal, the price is all-inclusive and must include all necessary costs including, but not limited to, materials, labor, travel, copying costs, incidentals, equipment, space, taxes, profit, insurance and any other items necessary to effectively conduct and complete the Scope of Work.

## **4.2 EXPERIENCE/PAST PERFORMANCE (250 Points)**

### **4.2.1 BUSINESS HISTORY**

The Proposer shall provide a history of the business including the date established, the type of ownership or legal structure of the business (sole proprietor, partnership, corporation, etc.), the length of time that the firm has been operating as the legal entity and the length of time the firm has been providing the requested services. Discuss the areas of expertise and resources available both nationally and locally to provide the requested services. (Limit one (1) page maximum)

### **4.2.2 KEY PERSONNEL**

List the job descriptions, titles, and staffing requirements for all personnel who will be direct employees, contract employees, or independent contractors utilized for the services. All drivers of the tractors, the Management Representative, local Operations Manager and the Service Coordinator shall be employees of the Proposer or an approved sub-contractor and are required to have the appropriate class of license from the State of Arizona.

List of subcontractors to be used, if applicable.

Attach resumes of the key personnel that will be specifically assigned to this contract, including the Management Representative, local Operations Manager and Service Coordinator. Include education and training. Resumes shall state clearly any experience specifically related to the Scope of Work and list any similar work successfully completed. Limit one (1) page per resume and up to five resumes for key personnel. The resumes should be for the same key personnel that will be assigned to any resultant contract.

### **4.2.3 ADVERSE ACTIONS/POTENTIAL IMPACT**

State whether the company is currently involved in any litigation, threatened litigation, investigation, reorganization, receivership, filing, strike, audit, corporate acquisition, unpaid judgments or other action that could have an adverse impact on your ability to provide the required RFP needs. If so, please describe the nature of the item and its potential impact.

State whether your firm has been unable to complete a contract, been removed from a contract, or been replaced during a contract period in the past five years. If so, explain what happened and why.

### **4.2.4 GOVERNMENT/CORPORATE EXPERIENCE**

State your firm's experience in providing services to public entities or corporate entities. Using Form G in Section Nine, list all other government contracts that you have now or have had in the past five years including the City of Prescott.

### **4.2.5 OTHER RELEVANT INFORMATION**

Demonstrate experience in municipal solid waste hauling from transfer station facilities to disposal facilities for a minimum of four (4) contiguous years; include the total tonnage hauled per month for the past twenty four (24) months.

- (a) Demonstrate fleet operation capability by providing a minimum fleet of four (4) 18-wheel Tractors and sufficient trailers to gross vehicle weight (GVW) rating not to exceed 80,000 pounds for each 18-wheel tractor and trailer. Proposer shall submit a fleet maintenance record summary for at least four (4) 18-wheel tractors and trailers for the past twelve (12) months, including date, mileage, type of maintenance performed, and vehicle identification

number for tractors or trailers that are more than two years old that will be used in the performance of work.

(b) Contractor must provide the most recent twenty four (24) months of accident history, and be able to submit the company's safety plan prior to commencing work under the contract.

**4.2.6** Proposer must submit an equipment inventory, which shall contain, at a minimum, the following components:

a) The number, type, age, and description of tractors that will be utilized for the services of hauling the amount of tons handled by the City facility. All tractors must be licensed and registered in Arizona.

b) The number, type, age, and description of transfer trailers (including dimension and volume) that will be utilized for the services of hauling the amount of tons handled by the City facility. All trailers must be licensed and registered in Arizona.

### **4.3 OPERATIONS PLAN (200 Points)**

The Proposer shall submit a complete operational plan as described in Section 7.18 for review. It is the Proposer's responsibility to prove to the City that they have more expertise than their competitors in terms of identifying and minimizing technical risks. Proposer shall identify risks, briefly explain the cause(s) of the risk, and offer a solution. Since the City is committed to maintaining a litter free environment, the operations plan shall describe the methods employed to ensure litter spilling from trailers is prevented.

### **4.4 TRANSITION PLAN (200 Points)**

The Proposer shall submit a one (1) page plan that involves the key action steps necessary to be ready to commence execution of hauling obligations as of the effective date of the contract. This document shall include important dates that equipment will be acquired, drivers hired, training completed, and other milestones that shall be met prior to the effective date of the contract.

### **4.5 INTERVIEW – CLARIFICATION ONLY**

**4.5.1** The City reserves the right to shortlist the Proposers on all of the stated criteria. However, the City may determine that short listing is not necessary.

If necessary, the City may shortlist the top rated proposers based on the collected information (experience and past performance, price proposal, operations plan, financial stability, and transition plan). Shortlisted Proposers may be required to participate in an interview period. The City may interview all key personnel including, but not limited to:

Local Operations Manager  
Managing Representative  
Service Coordinator

The City may also request to interview additional personnel. The City will interview individuals separately (but also reserves the right to interview as a group). No other individuals from the Proposer's organization will be allowed to sit in or participate during the interviews.

Important Note: All proposed team members must be actual personnel who will be working on this account and must be available in person for interviews on the date specified if the City decides to perform interviews. No substitutes, proxies, phone interviews, or electronic interviews will be allowed. Individuals who fail to attend the interview will not be given a score which may jeopardize the competitiveness. If awarded the project, all interview statements will become part of the final contract.

#### **4.5.2 ADDITIONAL INVESTIGATIONS**

The City reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any proposer submitting a proposal including, without limitation, information provided by former employees and/or creditors.

#### **4.5.3 PRIOR EXPERIENCE**

Experiences with the City and entities that evaluation committee members represent may be taken into consideration when evaluating the qualifications and experience.

#### **4.5.4 OVERALL EVALUATION OF THE PROPOSAL RESPONSE**

The overall completeness, accuracy and quality of the proposal may be taken into consideration when evaluating the qualifications and experience.

#### **4.5.5 REQUIRED AGREEMENTS**

Any required agreements, to include any required for third party software, must be submitted at time of proposal submission.

### **SECTION FIVE: PROPOSAL RESULTS**

**5.1** Proposals will be opened on the proposal due date at the time and location indicated in the Schedule of Events at which time the name of each proposer shall be read. Proposals and other information received in response to the Request for Proposal shall be shown only to authorize City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Proposals are not available for public inspection until after award recommendation has been posted on the City's website.

**5.2** A preliminary tabulation will be posted on the City's website, <http://www.prescott-az.gov/business/bids/>. The information on the preliminary tabulation will be posted as it was read during the proposal opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the proposals an award recommendation will be posted on the website. No further notification will be provided to unsuccessful Proposers.

### **SECTION SIX: AWARD OF CONTRACT**

**6.1** Award will be made to the overall highest scoring Proposer who meets all criteria of this solicitation. If two or more finalists are tied, the finalist with the lowest cost will be awarded the contract. The City reserves the right to award all or a portion of the contract to one or more contractors.

The City of Prescott is preparing a hauling services cost estimate for comparison to proposals received. The cost estimate will be sealed and confidential, and it will be opened and announced at the bid opening. If it is found to be advantageous and in the best interest of the City to manage these services internally, all proposals may be rejected at the sole discretion of the City.

**6.2** The City shall consider awarding agreements only to responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement. In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Bidder in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Bidder. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Bidder with the City or with other agencies, references provided by the Bidder to the City, information provided by the Bidder as part of the solicitation responses, and information not specifically provided by the Bidder but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the

City. Such evaluation by the City shall be final and not subject to appeal. Furthermore, no agreement will be awarded to a Bidder if any owner of such Bidder has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Bidder has unsatisfied tax, disbarment or judgment liens.

**6.3** The City reserves the right to obtain Proposer clarifications where necessary to arrive at a full and complete understanding of Proposer's service and/or solicitation response. Clarification means a communication with a Proposer for the sole purpose of eliminating ambiguities in the Proposal and does not give Proposer an opportunity to revise or modify its Proposal.

**6.4** 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 proposals or portions thereof; or (3) reissue a solicitation.

**6.5** 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. Proposals do not become contracts until they are approved by City Council. All of the terms, conditions and specifications of the procurement contract are contained in the solicitation, unless any of the terms, conditions, or specifications is modified by an addendum or contract amendment.

## **SECTION SEVEN: SCOPE OF WORK**

### **7.1 INTRODUCTION**

The Sundog Transfer Station, located at 2800 Sundog Road, Prescott, AZ 86301, was designed to receive, transfer and sort up to 250 tons of solid waste daily. Tractor/transfer trailers ("Combinations") are loaded with solid waste or recyclables at the Transfer Station and hauled to the Destination Facilities as follows:

- Solid Waste-Gray Wolf Landfill, 23355 E. Hwy 169, Milepost 11, Dewey, AZ 86237
- Recyclables-North Gateway Transfer Station, 30205 N. Black Canyon Hwy, Phoenix, AZ 85085

The City is currently a party in an Intergovernmental Agreement (IGA) with the City of Phoenix to process recyclables at the North Gateway Transfer Station. If, at any time, this IGA is terminated with the City of Phoenix or the use of another facility is required, the City and the Contractor will, at that time, negotiate pricing for hauling to a new destination facility.

Additionally, the City plans to close the Transfer Station for approximately six weeks in April-May 2017 in order to complete two major maintenance repair projects – replacement of the transfer station floor slab and replacement of the main scales. The Transfer Station will be closed to the public only – City tonnages will still be processed so during the initial first months of the contract, the Contractor should anticipate lower hauled tonnages.

### **7.2 SERVICES**

The Contractor shall, except as may be otherwise provided herein, furnish all labor, materials, supplies, equipment, maintenance, and supervision necessary, useful, or required to perform the services. The contractor's hauling obligation shall be hauling of solid waste or recyclables from the Transfer Station to designated facilities, where it shall be unloaded as soon as possible. The City expects solid waste will be hauled within twenty-four (24) hours of being loaded. In addition to the Contractor's primary hauling obligation, the Contractor shall also be obligated and responsible for providing additional hauling or back-hauling services from the destination facilities as provided for in this Contract and as requested by the City.

### **7.3 HISTORICAL DATA**

Monthly historical hauled tonnages are as follows:

<b>Trash</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Recycle</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Jan	3,383.04	3,246.43	3251.12	Jan	319.97	319.97	434.55
Feb	2,976.05	3,286.31	3575.56	Feb	264.52	325.74	411.38
Mar	3,344.59	3,656.06	3967.84	Mar	288.71	341.67	480.66
Apr	3,512.37	3944.87	3882.38	Apr	337.64	336.40	421.19
May	3,743.75	3815.86	4084.74	May	383.00	267.18	409.56
Jun	3,765.14	4065.88	4080.28	Jun	339.49	334.16	452.42
July	4,118.83	4252.27	3933.54	July	274.43	422.75	370.02
Aug	3,888.92	4005.05		Aug	351.08	443.44	
Sep	3,948.72	3974.31		Sep	383.00	398.39	
Oct	3,893.98	3719.77		Oct	361.20	446.26	
Nov	3,200.08	3547.02		Nov	305.89	401.44	
Dec	3,406.90	3411.55		Dec	410.04	454.72	
<b>Total</b>	<b>43,182.37</b>	<b>44,928.38</b>	<b>26,775.46</b>	<b>Total</b>	<b>4,019.03</b>	<b>4,592.12</b>	<b>2,979.78</b>

The City does not guarantee any minimum tonnage available for hauling.

The City anticipates only slight growth-related annual increases in tonnage hauled from the Transfer Station over the life of the contract. However, an increase or decrease is possible. The City is developing landfill diversion goals and plans for its facilities and hopes to significantly increase diversion of materials away from the landfill. The Solid Waste Division is working on a strategic plan goal to increase diversion from the landfill from the current 30%. Dependent on the rate of overall growth in the City, reaching these goals could significantly reduce daily tonnage to the landfill.

#### **7.4 AREAS FOR THE CONTRACTOR'S USE**

**7.4.1** The Contractor's personnel shall remain in designated Contractor use areas at all times and only those personnel engaged in service activities shall be in Contractor use areas. Further, the Contractor's personnel shall not interfere with recycling operations or other functions being performed or activities being carried out at City Facilities, Source Facilities, or the Destination Facilities that are not under the direct purview of the Contractor as herein provided.

**7.4.2** The City shall provide the following areas at the Transfer Station for use by the Contractor:

- **Transfer Tunnel.** The Contractor shall be provided access to the Transfer Tunnel and ramps as required for the Contractor's use while the City loads the Contractor's Transfer Trailers. The City will clean the Transfer Tunnel as necessary or as requested to prevent excessive amounts of Material from accumulating. However, the City will not be responsible for any tire damage caused as a result of materials in the Transfer Tunnel or for any other reason.
- **Inbound / Outbound Scales.** The Contractor will weigh each load leaving the Transfer Station, and weigh each load upon arriving at, and upon departing, destination facilities. The contractor will be required to follow the light notifications system and provide transport receipts to the City, if requested.

#### **7.5 MEETINGS AND COMMUNICATIONS**

In order to reduce potential problems and to provide a forum for discussing and resolving any operational questions or issues that may arise, the Parties shall meet on a regular basis and shall adopt certain communication procedures as follows:

**7.5.1** The Contractor and the City shall each designate a person (the "Service Coordinator") for the purpose of overseeing the Services and coordinating communication between the City and the Contractor. Either Party may change its designated Service Coordinator by notifying the other Party, in writing, of the change. To the maximum extent possible, communications between the City and the Contractor concerning the Contract shall be directed through the Service Coordinators. The Service Coordinator shall have the authority, on behalf of the Party represented, to discuss and resolve service related matters such as operational problems, customer complaints, and public relations.

**7.5.2** After the Commencement Date, project meetings shall be held between the Service Coordinators on an as-needed basis unless otherwise agreed, or at the City's request. The primary purpose of such meetings shall be to evaluate progress or problems, to air and seek resolution of complaints and other issues as the Parties deem appropriate.

**7.5.3** The Contractor shall have a responsible person in charge and on-site during and after facility operating hours with the authority to make decisions relevant to Services. The Contractor shall at all times have representatives available who are responsible for responding to emergency situations. The names and phone numbers of emergency representatives shall be given to the City ten (10) days prior to the Commencement Date, and shall be updated as soon as any changes are made.

## **7.6 LOADING OF EQUIPMENT**

**7.6.1** The City shall load the Contractor's Transfer Trailers. Trailers loaded at the Transfer Station hopper will be tamped for load distribution. The City will make reasonable efforts to maximize each load based either on weight or Transfer Trailer volume. The Contractor's Transfer Trailers will be loaded at the Transfer Tunnel and other areas identified by the City as needed. The City may designate other (temporary or permanent) loading locations at the Transfer Station, contingent upon changes to existing operations. The Contractor shall be responsible for legal weight limits and height restrictions.

**7.6.2** The Contractor shall provide and maintain sufficient equipment of adequate design and capacity to load, transport, and unload the materials in a timely fashion. The Contractor shall determine the specific types and numbers of equipment to be used so that there are empty Transfer Trailers available at the Transfer Station to receive Materials during operating hours. The Contractor shall ensure that equipment presents a neat, sanitary appearance, and that all materials are completely contained within the vehicle body.

**7.6.3** The Contractor, upon receipt of notification verbally or by phone, will position a transfer trailer for loading in the transfer tunnel within 30 minutes. If a trailer is not positioned for loading within 30 minutes, the Contractor will be subject to a twenty-five (25%) reduction in the unit price to be paid for that load. If a trailer is not positioned for loading within sixty (60) minutes, the Contractor will be subject to a fifty percent (50%) reduction in the unit price to be paid for that load. If a trailer is not positioned for loading within one hundred and twenty (120) minutes, the Contractor will be subject to a one hundred percent (100%) reduction in the unit price to be paid for that load.

**7.6.4** The Contractor shall ensure it provides appropriate staffing and equipment to receive materials at any source facility as needed during operating hours.

## **7.7 SOLID WASTE/RECYCLABLES**

**7.7.1** Solid waste shall be hauled by the Contractor to the Gray Wolf Landfill or to any other destination facility as directed. All hauling activities shall comply with the hauling hours specified in this solicitation and the operating hours of the Transfer Station or other destination facility. The Contractor shall comply with the rules of the destination facility and unload the materials in a

location as directed by personnel at the destination facility. The Contractor shall at no time hold waste in their trucks in excess of 24 hours.

**7.7.2** Recyclables shall be hauled by the Contractor to the North Gateway Transfer Station or to any other destination facility as directed. All hauling activities shall comply with the hauling hours specified in this solicitation and the operating hours of the Transfer Station or other destination facility. The Contractor shall comply with the rules of the destination facility and unload the materials in a location as directed by personnel at the destination facility. The Contractor shall at no time hold waste in their trucks in excess of 24 hours

## **7.8 HAULING TO DESTINATION FACILITIES**

The Contractor shall only haul from the Source Facility to destination facilities. The City may request, at its discretion, other landfill sites or destinations.

If the Contractor hauls non-City solid waste to destination facilities without prior notice and does not pay the applicable tip fee, the Contractor will be assessed liquidated damages in the amount of five thousand dollars (\$5,000.00) per load. The City may deem such act as a breach of the Contract. In addition, if the Contractor disposes of City solid waste at any other landfill not designated in the Contract, the Contractor will be assessed liquidated damages in the amount of five thousand dollars (\$5,000.00) per load. The City may deem such act as a breach of the Contract.

## **7.9 EXCESS SOLID WASTE ON TIPPING FLOOR**

The City strives to keep the tipping floor clear of debris as a standard business practice. No solid waste shall be left on the Transfer Station floor after operating hours without City approval. In the event excess amounts of solid waste remain on the tipping floor after operating hours, the City may require the Contractor to perform hauling operations after the scheduled closing time of such City facilities. The Contractor will be responsible for any cost incurred to the City to provide for the after hours hauling operations that are the result of the Contractor's business practices or failure to respond to hauling conditions. The City reserves the right to hire another Contractor to perform the work to ensure compliance with this requirement.

## **7.10 USE OF TRANSFER TUNNEL**

The Contractor shall be responsible for moving empty transfer trailers into the Transfer Tunnel in alignment with the hopper. The Contractor shall also be responsible for moving full transfer trailers from the Transfer Tunnel immediately after each Transfer Trailer is loaded.

## **7.11 SECURING OF LOADS AND CLEAN UP OF SPILLAGE**

**7.11.1** Immediately after loading is complete, the Contractor shall secure or cover the transfer trailers to prevent littering at the City Facilities and during materials transit to destination facilities. The Contractor will construct a tarping station at the Transfer Station, the location of which to be agreed upon between the City and the Contractor. The City shall not be liable to the contractor for any damages or injuries arising out of the use of a tarping station. No tarping station will be provided by the City. The Contractor will indemnify, defend and hold harmless the City for any and all damages arising out of such construction and operation to fullest extent of the law.

**7.11.2** The Contractor shall be responsible for immediate cleanup of any dumped or spilled materials that occur during the course of hauling regardless of whether the materials are dumped or spilled due to fault of the Contractor, and shall return the area to the condition it was in prior to the dumping or spilling of materials.

**7.11.3** The Contractor will be assessed Liquidated Damages in the amount of Five Hundred Dollars (\$500) for each occurrence that the Contractor hauls materials without adequately covering Transfer Trailers to prevent spillage of materials, for each occurrence that the Contractor fails to immediately clean up dumped or spilled materials, and for each complaint received from the public. For purposes of this section, adequate cover means the appropriate securing of tarps that are in good condition and free of holes or gaps, which the City may inspect on a regular basis and provide reports to the Contractor.

## **7.12 LOADING HOURS AT SUNDOG TRANSFER STATION**

The general loading hours for the Transfer Station are from 8:00 a.m. through 4:00 p.m., Monday through Saturday. The facility and scales are currently closed on Sundays. The scale hours and designated City holidays are subject to change based on a seven (7) day written notice to the Contractor from the City. The Transfer Station observes the following legal holidays: New Year's Day, Thanksgiving Day, and Christmas Day.

- Gray Wolf Landfill hours are Monday through Friday, 7:00 a.m. through 4:00 p.m., and Saturday from 8:00 a.m. - 12:00 p.m.
- North Gateway Transfer Station hours are Monday through Friday, 5:30 a.m. through 5:00 p.m. and Saturday from 6:00 a.m.-3:00 p.m.

## **7.13 OPERATION OF SCALES AND SCALE OUTAGES**

**7.13.1** The City has existing scales that are located at the Transfer Station and are operated by the City for the primary purpose of weighing incoming and outgoing loads. The City shall use its best efforts to ensure that the scales are accurate in accordance with State requirements and operational during the hours of operation specified.

**7.13.2** The Contractor shall obtain tare weights for each tractor and each transfer trailer utilizing the City's scales. Tare weights shall be obtained at least three (3) days prior to the commencement date, and tare weights of all tractors and transfer trailers shall be verified by the Contractor at a frequency determined by the City, but shall not be more frequent than quarterly. The City reserves the right to spot check tare weights on any equipment as it deems necessary.

**7.13.3** Prior to leaving a source facility and upon arriving at destination facilities, the Contractor shall cause every load to be weighed and a transaction processed.

**7.13.4** In the event the City's scales become temporarily inoperable due to testing, maintenance, or malfunction, the City shall estimate the weight of loads leaving a source facility on the basis of truck volume and historical data obtained from the past operation. The weigh tickets for estimated weights shall delineate estimated weights from actual weights. These estimates shall serve as official records for the duration of the scale outage.

## **7.14 EQUIPMENT OPERATIONAL COMPLIANCE**

The Contractor shall not haul loads exceeding legal weight and height restrictions. The Contractor shall be responsible for determining the weight and height of each load hauled prior to leaving the source facility. If a load is overweight or not properly distributed, the Contractor shall notify the City and arrange for the immediate removal or adjustment of materials so that all weight and height restrictions are met prior to departure from the source facility.

## **7.15 UNLOADING AT DESTINATION FACILITIES**

**7.15.1** The Contractor shall be required to weigh-in upon arrival at a destination facility and weigh-out upon departing a destination facility.

**7.15.2** After entry into the facility, the destination facility personnel will instruct the Contractor where and when loads are to be unloaded.

## **7.16 FUELING**

The Contractor shall be responsible for procuring fuel and for fueling its equipment used in performing the services. Stationary or off-road equipment that remain on City property may be fueled on City property. No permanent or stationary fuel dispensing tanks will be allowed on City property. The Contractor shall discuss procedures for fuel acquisition, the fueling operation, and Spill Prevention Control and Counter Measures (SPCC) in the Operations Plan.

## **7.17 COMPLIANCE WITH LEGAL REQUIREMENTS**

**7.17.1** Contractor shall comply with all laws, rules, and regulations for travel on all roads over which it travels in the performance of the services.

**7.17.2** All tractors and transfer trailers shall be properly registered, licensed, and permitted by the State of Arizona and Maricopa County and Yavapai County. The Contractor shall pay all taxes and fees for the operation of the equipment.

## **7.18 OPERATIONS PLAN**

**7.18.1** The Contractor shall submit an operations plan with their proposal for review and approval by the City. The City may request a revised operations plan be submitted for acceptance by the City within 30 days of a request by the City.

At a minimum, the operations plan should specifically address how the Contractor proposes to manage their operations to provide outstanding service at competitive costs as defined under the scope of this solicitation. The operations plan shall identify the risks involved in providing the services and the specific actions the Proposer will implement to mitigate these risks as deemed necessary to meet the service requirements. The plan shall identify proposed fleet size dedicated to City operations, staffing and employee hours. The operations plan shall include a contingency plan for performing the services under this Contract in the event that Contractor's equipment becomes temporarily or permanently inoperable. The plan will also include a section addressing on-site fueling and spill prevention, control and counter measures (SPCC) and procedures for resolving hot load occurrences.

Within 30 days of award of a contract, the following plans shall be submitted: safety plans, training plans, staff retention plans, equipment preventive maintenance plans, equipment purchase and replacement plans, basic operating activities, rent plans, and equipment inventory details.

**7.18.2** Should the Contractor desire to make any changes in the operations plan, the Contractor shall submit a request in writing to the City no less than two (2) weeks prior to the requested effective date for such revisions. Such request shall fully explain the revision and the reasons for the request. The City shall accept or decline the request within two (2) weeks of receipt.

## **7.19 ROUTING FROM SOURCE FACILITIES TO DESTINATION FACILITIES**

**7.19.1** The Contractor agrees to comply with the primary routes as provided in the operations plan agreed to by the City.

**7.19.2** Under no circumstances shall the Contractor use the private mining road east of the NGTS facility.

**7.19.3** If the Contractor, for any reason, desires to change any previously approved designated route, the Contractor shall submit such request in writing.

**7.19.4** In the case of an emergency road closure that affects the Contractor's use of any approved designated route, the Contractor shall use an appropriate alternate route and shall immediately notify the City of the situation upon arrival at a City facility.

**7.19.5** The Contractor shall only haul from the source facilities to the destination facilities while performing the services. The City may designate other temporary or permanent source and destination facilities at its discretion, depending on changes to its existing operations.

**7.19.6** The Contractor shall operate in a manner to minimize the number of loaded trucks that are stored overnight.

## **7.20 DESTINATION FACILITIES**

The primary destination facilities will be GWL and NGTS. Solid waste will primarily be hauled to GWL, and recyclables will primarily be hauled to NGTS. The City, however, may need to utilize another destination facility.

## **7.21 EQUIPMENT**

The Contractor's equipment shall accommodate existing loading appurtenances at the City facility, specifically the transfer tunnel, scales, and hopper.

### **7.21.1 EQUIPMENT FURNISHED BY CONTRACTOR**

- a. Tractors shall be of sufficient power to pull any loaded transfer trailer on public thoroughfares, up tunnel ramps and on uneven landfill surfaces. The Contractor shall provide equipment that securely covers loads during transit. Cover equipment shall prevent litter from blowing out of transfer trailers during transit and while at the City Facility.
- b. The Contractor shall either own or lease equipment. Any equipment leases shall provide language that specifies that in the event of a default by Contractor, the City has the right to retain the equipment at the lease rate charged the Contractor under any such leases.
- c. The average age of the Contractor's tractor fleet throughout the duration of the contract shall be no more than seven (7) years with no tractors older than twelve (12) years.
- d. The average age of the Contractor's trailer fleet throughout the duration of the contract shall be no more than seven (7) years with no Trailers older than fifteen (15) years.

### **7.21.2 COMBINATION LIMITATIONS**

Combination equipment shall meet (at a minimum, where applicable) the following requirements;

- a) Meet the maximum legal vehicle weight capacity, when loaded, of eighty thousand (80,000) pounds per Bridge Gross Weight Formula.
- b) Fit in the Transfer Tunnel, beneath the hopper while aligning properly on tunnel scale platforms.
- c) Fit on the inbound and outbound scales at the Transfer Station and destination disposal facilities.

### **7.21.2 TRANSFER TRAILER HEIGHT LIMITATIONS**

Transfer trailers shall not exceed a maximum of thirteen (13) feet six (6) inches in height, nor be less than a minimum of thirteen (13) feet in height, in order to ensure proper spacing between the transfer trailer and the hopper.

### **7.21.3 CONTRACTOR EQUIPMENT MAINTENANCE**

Contractor shall be responsible for the repairs and routine maintenance of all its equipment used to perform services. Routine maintenance shall not be performed on City property except to stationary or off-road equipment which may be repaired on City property as designated and approved by the City. However, the Contractor may perform the following services on equipment at the City facilities: 1) tire repair; and 2) topping off fluids or lubricants necessary for safe and efficient operation of equipment. Any spills or residue shall immediately be removed to ensure the area is clean and left in the condition that it was in prior to the incident.

### **7.21.4 BACKUP EQUIPMENT**

The Contractor shall furnish, at its sole expense, whatever backup or substitute equipment that may be necessary for the Contractor to perform the services during any period when any of the Contractor's equipment is inoperable or not in service for any reason.

### **7.21.5 EQUIPMENT IDENTIFICATION**

- a) The City shall provide an equipment number for each Contractor transfer trailer and each tractor. The assigned equipment number shall be permanently indicated and conspicuously displayed on the exterior of the transfer trailer and tractors. These identification numbers shall be used by the Contractor in preparation of monthly invoices and reports.
- b) The Contractor-provided tractors shall display the Contractor's company name and any other information as prescribed by federal, state, local or other regulations as required.

## **7.22 APPEARANCE OF EQUIPMENT**

All Contractor equipment used to perform the services shall be kept by the Contractor in a neat and clean appearance at all times. The Contractor shall clean out all transfer trailers each time they are unloaded before leaving a facility.

## **7.23 DAMAGES**

### **7.23.1 RISK OF LOSS**

The Contractor shall be responsible for the Contractor's equipment and shall bear the risk of loss due to theft, vandalism, fire, or any other casualty. The Contractor shall be fully responsible for damages to the Contractor's equipment and shall repair or replace equipment at the Contractor's expense.

### **7.23.2 DAMAGES CAUSED BY CONTRACTOR**

The Contractor shall be liable for any injury or damage caused by the Contractor to any City facilities, personnel, equipment, property, assets or to the property of any third party.

### **7.23.3 DAMAGES TO CONTRACTOR'S TRAILERS**

The City shall not be liable for any damages caused to the Contractor's transfer trailers except for chargeable damages. The Contractor shall notify the City of any chargeable damages caused by

the City to the Contractor's trailers immediately after damage occurs. The Contractor's damaged equipment shall remain on site for inspection by City staff to confirm the damage. Any such claim shall not be considered if the claim is not immediately reported and confirmed by City staff. The Contractor shall follow up with written notification to the City of the incident and all supporting documentation within forty-eight (48) hours from occurrence of the incident. Upon notification, the City may perform further investigation and collect required documentation as it deems necessary to assess the claim.

#### **7.23.4 DAMAGE BY FIRE**

In the event City facilities are damaged or destroyed by fire or other casualty to the extent it would materially adversely affect the Contractor's or the City's performance hereunder, then the City shall rebuild or repair the damage as soon as practicable. However, if the fire or other casualty occurs during the last year of the initial term, or at any time during any extended term of the Contract, then the City may at its sole discretion rebuild or repair the City's facilities. During repair or rebuilding, the Contractor shall be paid in accordance with the payment provisions of this Contract but only to the extent that the Contractor conducts hauling operations during any rebuild or repair period.

#### **7.24 PERSONNEL AND CONDUCT**

- a) All drivers of the tractors, the service coordinator, and the managing representative shall be employed by the Contractor.
- b) The Contractor shall ensure the dedication and involvement of Contractor personnel as necessary for the performance of the services in an acceptable manner and at a satisfactory rate of progress to meet the obligations of this contract. All Contractor employees shall be qualified and skilled in their respective trades.
- c) The Contractor's employees shall conduct themselves in a professional manner and shall present a clean and neat appearance at all times while performing their duties.
- d) The Contractor's employees, officers, and agents shall, at no time, identify themselves or in any way represent themselves, as being employees of the City.
- e) The Contractor shall comply with all OSHA requirements with regard to personal protective equipment (PPE) or any other requirements applicable to carrying out the duties under the scope of work. The Contractor shall require its employees to wear applicable PPE at all source and destination facilities. Further, the Contractor will ensure that employees have the appropriate harness, tying-off equipment, and any other required equipment to safely operate its tarping station.
- f) The Contractor shall ensure that no employee consumes alcohol or drugs, or is under the influence of alcohol or drugs, while performing the services. The Contractor shall ensure that no employee brings alcohol, drugs, or firearms onto any City facility.
- g) The Contractor agrees to assign experienced personnel to provide for successful and timely accomplishment of the Scope of Work. The City reserves the right at any time and for any reason during the Contract to reject any Contractor staff from performing services on behalf of the City.

#### **7.25 SAFETY, TRAINING AND DAMAGE PROTECTION**

- a) The Contractor shall be responsible for ensuring that employees operating Contractor's tractors possess and carry at all times a valid commercial driver's license and a current U.S. Department of Transportation medical examiner's certificate.

- b) The Contractor's tractors shall carry and maintain fire extinguishers at all times.
- c) The Contractor shall be responsible for resolving Hot Load occurrences when hauling materials. The City shall not be responsible for the providing any cleanup required as a result of a Hot Load, or any costs that result.
- d) The contractor shall train and supervise its personnel to properly haul materials and to properly handle Hot Loads, material spillage, and other foreseeable emergency situations.
- e) If requested by the City, the Training and Safety Plan shall be reviewed by the Contractor and shall be revised as necessary by the Contractor subject to acceptance by the City.
- f) The Contractor shall maintain records documenting the training received by each employee and made available to the City when requested.
- g) At the City's request, the Contractor shall meet with the City's representatives to discuss operating and safety rules and regulations.

#### **7.26 PUBLIC CONVENIENCE AND SAFETY**

The Contractor shall perform the services in a manner that will minimize complaints from the public and cause the least inconvenience or annoyance to the general public and property owners. Whenever the Contractor's operations create a condition hazardous to traffic or the public, the Contractor shall follow such proper procedures necessary to prevent accidents or damage or injury to the public. The Contractor shall respond to all complaints from the public related to the contractors operations within 48 hours. The Contractor shall resolve all complaints in a timely manner to the satisfaction of the City. The Contractor shall provide the City a written record of the compliant resolution for all complaints forwarded to the Contactor by the City. Should the Contractor fail to resolve the complaint in a timely manner to the satisfaction of the City, then the City may resolve the complaint and bill the Contractor for expenses incurred by the City.

#### **7.27 INSPECTIONS**

- a) The City shall have the right, but not the obligation, to inspect tractors and transfer trailers for hauling or unloading operations for safety violations and proper maintenance. The City may require corrective action before equipment can be used in hauling operations. The inspection or failure to inspect shall not result in any liability to the City.
- b) The Contractor shall ensure that all Contractor's employees perform all inspections necessary to fully satisfy Commercial Driver's License pre-check and post-check requirements for tractors and transfer trailers.

#### **7.28 ACCIDENT REPORTING REQUIREMENTS**

- a) The Contractor shall verbally notify the City immediately if: 1) any serious accidents or spillage of Material occurs in the performance of the services; or 2) and any accident involving Contractor's personnel or equipment or the City's personnel or property.
- b) The Contractor must provide the most recent twenty four (24) months of accident history report, upon contract commencement.

#### **7.29 RECONCILIATION REPORTS**

- a) Monthly invoicing reports shall be provided by the Contractor to the City and shall constitute official reporting for reconciliation purposes. The Contractor shall maintain and supply as requested the following information:

- b) The number of loads and weights of solid waste transferred from the Transfer Station to GWL.
- c) The number of loads and weights of recyclables transferred from the Transfer Station to the NGTS.
- d) Number of loads and weights of materials hauled to other destination facilities, including associated one-way mileage and costs, if applicable.

### **7.30 BUDGET CONTROLS**

- a) The Contractor shall maintain fiscal accounting processes and budgetary controls to ensure the responsible use and management of contract funds and accurate invoicing.
- b) The Contractor shall ensure costs incurred under this project will be appropriately accounted for and only applicable project expenses will be billed to the City.

### **7.31 OBSERVATION AND INSPECTION**

- a) The City, its representatives, and invitees shall have the right to observe and inspect operations at all times, provided it is conducted in such manner so as to minimize interference with the Contractor's performance and operations. The inspector may review operating records for the current and previous contract years, and may consist of an inspection of the physical areas of operations and equipment with emphasis on safety and hazard mitigation.
- b) The City may at any time inspect any and all records relating to the services performed to verify that the services are being performed in accordance with this Contract.
- c) The City's inspections shall not relieve the Contractor of any of its obligations herein or impose any liability upon the City.

### **7.32 COMPENSATION**

#### **7.32.1 BASIS AND METHOD OF PAYMENT**

- a) The Contractor shall submit invoices monthly in arrears in a form acceptable to the City. The City shall pay the Contractor within thirty (30) days of receipt of an accurate and correct invoice. Loads over 80,000 lbs will not be paid beyond the 80,000 lbs gross weight limit. The City's scale house transaction data will be used to resolve any discrepancies in load information.
- b) The Contractor shall submit invoices based on the current approved ton price and fuel price. The invoices shall include as separate items the ton price for other hauling of materials, if any. Amounts should be rounded to the nearest tenth.
- c) The City prefers that all invoices be submitted electronically. However, should there be a disruption to this process, all Contractor invoices shall be delivered in person or mailed first class to the Transfer Station.
- d) The City may deduct any liquidated damages previously communicated to Contractor in writing that are contractually due to the City from the payment due to the Contractor. Any such deduction shall not prohibit the City from seeking any other damages or declaring an event of default.

### 7.32.2 PRICE

All prices submitted shall be firm and fixed for the first year of the contract period. Thereafter, ton price adjustments will be considered annually based upon the Consumer Price Index as discussed in Section 7.34, and fuel price adjustments will be considered semi-annually annually based upon the Consumer Price Index as discussed in Section 7.34. Requested adjustments shall be submitted in writing with thirty (30) days advance notice. Requests shall be accompanied with written documentation from the Contractor and contain the market data from the Consumer Price Index (CPI), 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 Contract Specialist. Price increases agreed to by any staff other than the Contract Specialist are invalid. The contractor acknowledges and agrees that it will repay all monies paid for a requested price increase unless the price increase was specifically approved in writing by the Field and Facilities Services Director.

### 7.33 METHOD OF INVOICING

Invoices must include the following information:

- A. City contract agreement number.
- B. Description of services.
- C. Quantity hauled.
- D. Unit price extended and totaled.
- E. Applicable tax and fees, itemized separately.
- F. Invoice number and date.
- G. Payment terms.
- H. FOB terms

### 7.34 INFLATION FACTOR

**7.34.1** The Ton Price shall be adjusted on an annual basis for inflation. The adjustment shall be limited to the percentage of change in the Consumer Price Index (CPI), less energy, for the previous contract year, or three percent (3%), whichever is less. Any increase in prices will be referred to herein as the "Adjusted Ton Prices." For purposes of this Contract, CPI is defined as the Western Region Consumer Price Index for Statistics (BLS), United States Department of Labor.

- a) Adjusted ton prices will be effective for the subsequent contract year; the change in CPI will be calculated based on the change in the CPI for the previous contract year. Inflation adjustments shall be calculated each subsequent anniversary of the commencement date by the Contractor, and verified by the City. The Contractor must submit this calculation by the first Wednesday of the month following the change date.
- b) b. Method of Calculation: The City and the Contractor shall jointly compute the Adjusted Ton Prices. The following example illustrates calculation of the change factor for a twelve month period ending in December 2012.

CPI less energy (Series CUUR0400SA0LE):

December 2012	231.5
Less CPI December 2011 (prior year)	<u>226.1</u>
Change in CPI	5.4 (231.5-226.5)
Divided by previous CPI less energy	0.0239 (5.4/226.1)
Multiply by 100 = percent change	2.39% (rounded to nearest.01%)

The Ton Price would then be multiplied by 2.39% to calculate the adjustment which will be added to the price. These CPI adjustments may go up or down.

In the event that the BLS ceases publication of the specified CPI, the City and the Contractor shall determine an agreeable inflation index for the remainder of the contract.

**7.33.2** The Fuel Price shall be adjusted semi-annually for inflation. The adjustment shall be limited to the percentage of change in the Consumer Price Index (CPI) Average Price Data for Automotive Diesel Fuel, for the previous six months. Any increase in prices will be referred to herein as the "Adjusted Fuel Prices."

- a) The Adjusted Fuel Price will be effective for the six months subsequent to the bid start date; the change in CIP will be calculated based on the change in the CPI for the previous six months and an adjusted fuel price will be calculated. Inflation adjustments shall be calculated each subsequent six months after the commencement date by the Contractor, and verified by the City. The Contractor must submit this calculation by the first Wednesday of the month following the change date.
- b) Method of Calculation: The City and the Contractor shall jointly compute the Adjusted Fuel Prices. The following example illustrates calculation of the change factor for a six month period ending in December 2012.

CPI less energy (Series APU040074717):

December 2012	5.108
Less CPI December 2011 (prior year)	4.128
Change in CPI	.98 (5.108-4.128)
Divided by previous CPI less energy	0.2374 (.98/4.128)
Multiply by 100 = percent change	23.74% (rounded to nearest.01%)

The Fuel Price would then be multiplied by 23.74% to calculate the adjustment which will be added to the price. These CPI adjustments may go up or down.

In the event that the BLS ceases publication of the specified CPI, the City and the Contractor shall determine an agreeable inflation index for the remainder of the contract.

**SECTION EIGHT: GENERAL TERMS AND CONDITIONS**

**8.1 CONTRACT INTERPRETATION**

**8.1.1 APPLICABLE LAW:** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in Yavapai County, State of Arizona.

**8.1.2 IMPLIED CONTRACT TERMS:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

**8.1.3 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 shall prevail in the order set forth below:

- A. Terms and conditions

- B. Statement or scope of work
- C. Specifications
- D. Attachments
- E. Exhibits
- F. Instructions to Proposers
- G. Other documents referenced or included in the Request for Proposal.

**8.1.4 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 shall 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 shall 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 shall save and hold the City harmless with respect thereto.

**8.1.5 SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

**8.1.6 NON-WAIVER OF LIABILITY:** The City of Prescott, 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.

**8.1.7 PAROLE 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 shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract shall 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.

**8.1.8 CONTRACT TERM:** The initial term of the contract shall be for a period of five (5) years. The contract may be extended for five (5) additional one (1) year periods up to a total of ten (10) years, with the mutual consent of the City of Prescott and Contractor.

The City may administratively extend the Contract pursuant to this paragraph without additional City Council approval. Price changes for succeeding years shall be adjusted in accordance with the Consumer Price Index (CPI) reflected in Section 7.34.

Additionally, by City initiation and upon written notification to the Contractor not less than ninety (90) days prior to the expiration of the contract, this contract may be extended on a month-to-month basis for a period not to exceed four (4) months. Any contract extension shall be subject to all provisions of the contract.

## **8.2 CONTRACT ADMINISTRATION AND OPERATION**

**8.2.1 RECORDS:** All books, accounts, reports, files and other records relating to the contract shall 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 Prescott office as designated by the City.

**8.2.2 PUBLIC RECORD:** All proposals submitted in response to this invitation shall become the property of the City and become a matter of public record available for review pursuant to Arizona State law.

If a Proposer believes that a specific section of its proposal response is confidential or proprietary, the Proposer shall isolate the pages marked “confidential” or “proprietary” or a combination of both words in a specific and clearly labeled section of its proposal response. The Proposer shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the City will review the material and make a determination. The City will assume no liability for the release of Contractor’s “confidential” or “proprietary”, if a public records request is made and the City determines, in its sole discretion that such records are subject to release under the Arizona Public Records Law, A.R.S. 39-101. If the City chooses to withhold records and a court of competent jurisdiction orders release of “confidential” or “proprietary” documents, either by way of subpoena, through a public records lawsuit, or any other lawful mechanism, the City will assume no liability from the Contractor as to the release of such “confidential” or “proprietary” documents.

**8.2.3 SOLICITATION TRANSPARENCY POLICY:** Beginning on the date the solicitation is issued and until the date the contract is awarded or the solicitation withdrawn, all persons or entities that respond to the solicitation for the SOLID WASTE HAULING SERVICES, including their employees, agents, representatives, proposed partner(s), subcontractor(s), joint venturer(s), member(s), or any of their lobbyists or attorneys, (collectively, the Proposers) will refrain from any direct or indirect contact with any person (other than the designated Contract Specialist) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Deputy City Manager, Department Heads, the Mayor and other members of the Prescott City Council. As long as the solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who are not involved in the selection process.

**8.2.4 COOPERATIVE PURCHASING:** Any contract resulting from this solicitation shall be for the use of the City of Prescott. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. In order to participate in any resultant contract, a political subdivision or nonprofit educational or public health institution must have been invited to participate in this specific solicitation and the contractor must be in agreement with the cooperative transaction. In addition to cooperative purchasing, any eligible agency may elect to participate (piggyback) on any resultant contract; specific eligible political subdivision, nonprofit educational or public health institution and the contractor must be in agreement.

Any orders placed to the successful contractor will be placed by the specific agencies participating in this purchase. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

**8.2.5 PROTESTS:** Any protest or notice that a bid is non-responsive must be filed by 4:00 p.m. up to ten (10) days after award notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the Contract Specialist via e-mail. 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 Proposer(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 Proposer.

**8.2.6 CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:** The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Proposer submitting a proposal herein waives any right to object now or at any future time, before anybody or agency, including but not limited to, the City Council of the City of Prescott or any court.

**8.3 CONFIDENTIALITY AND DATA RECORD:** All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this agreement is confidential, proprietary information owned by the City. Except as specifically provided in this agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager, or his/her designee.

Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.

In the event that data collected or obtained by the Contractor in connection with this agreement is believed to have been compromised, Contractor shall notify the Contract Specialist immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this section shall be deemed to cause irreparable harm justifies injunctive relief in court. A violation of this section may result in immediate termination of this agreement without notice.

The obligations of Contractor under this section shall survive the termination of this agreement.

**8.4 DISCRIMINATION PROHIBITED:** The Contractor, any subcontractors, suppliers or persons performing under this contract 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, any subcontractors, suppliers or persons 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. 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, any subcontractors, suppliers or persons performing under this contract 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.

The Contractor, any subcontractors, suppliers or persons performing under this Contract further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or sub-agreements to this agreement entered into by the Contractor.

**8.5 LICENSES AND PERMITS:** Contractor shall keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

**8.6 ADVERTISING:** The Supplier shall not advertise or publish the fact that the City has contracted to purchase items from the Supplier without the City's prior written approval.

**8.7 EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Prescott and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

**8.8 OWNERSHIP OF INTELLECTUAL PROPERTY:** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be considered work for hire and the City shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the City requesting the issuance of this contract shall own (for and on behalf of the City) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the City. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any other entity without the express written authorization of the City. If by operation of law, the Intellectual Property is not owned in its entirety by the City automatically upon its creation, then Contractor agrees to assign and hereby assigns to the City the ownership of the Intellectual Property. The Contractor agrees to take such further action and execute and deliver such further agreements and other instruments as the City may reasonably request.

It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.

**8.9 HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities shall 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 shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract
- A list of all federal, state, or local (EPA, OSHA, Yavapai County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City shall 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 shall also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement.

**8.10 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 or not they are 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.

**8.11 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 shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by a court of competent jurisdiction.

**8.12 EMERGENCY PURCHASES:** The City reserves the right to purchase or utilize from other sources which are required on an emergency basis and cannot be supplied immediately from the Contractor.

**8.13 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 shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

#### **8.14 COSTS AND PAYMENTS**

**8.14.1 PAYMENT TERMS:** The City shall make every effort to process payment for the purchase of material or services within 30 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 proposal.

**8.14.2 PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City laws, rules, regulations and policies require 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.

**8.14.3 LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.

**8.14.4 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.

**8.14.5 NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.

**8.14.6 FUND APPROPRIATION CONTINGENCY:** The Contractor recognizes that any agreement entered into shall 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 of Prescott, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Prescott 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.

**8.14.7 MAXIMUM PRICES:** The City shall not be invoiced at prices higher than those stated in any contract resulting from this proposal. Proposer certifies, by signing this proposal that the prices offered are no higher than the lowest price the Proposer charges other buyers for similar quantities under similar conditions. Proposer further agrees that any reductions in the price of the goods or services covered by this proposal and occurring after award will apply to the undelivered balance. The Proposer shall promptly notify the City of such price reductions.

**8.14.8 F.O.B. POINT:** All prices are to be quoted F.O.B. delivered, unless otherwise specified elsewhere in this solicitation.

## **8.15 CONTRACT CHANGES**

**8.15.1 CONTRACT AMENDMENTS:** Contracts shall be modified only by a written contract amendment by the City and persons duly authorized to enter into contracts on behalf of the Contractor.

**8.15.2 ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due thereunder shall be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor shall 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 shall be void.

**8.15.3 NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Prescott. The City reserves the right to obtain like goods or services from another source when necessary.

**8.15.4 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 shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be binding on the City unless evidenced in writing and approved by the City prior to the institution of the change.

## **8.16 RISK OF LOSS AND LIABILITY**

**8.16.1 TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall 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 shall not release seller from any obligation hereunder.

**8.16.2 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 shall 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 shall conform to the cancellation clause set forth in this document.

**8.16.3 GENERAL INDEMNIFICATION:** To the fullest extent allowed by the law, the Contractor shall indemnify, defend, save and hold harmless the City of Prescott and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any Federal, State or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award

of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

**8.16.4 INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK:** To the fullest extent allowed by the law, the Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this contract.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Prescott and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own counsel in any such suit or proceedings if it so desires. It is expressly agreed by the seller that these covenants are irrevocable and perpetual.

**8.16.5 FORCE MAJEURE:** Except for payment of sums due, neither party shall 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 shall 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 shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall 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.

**8.16.6 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.

**8.16.7 DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to the building or grounds results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish to match existing material as approved by the City at Contractor's expense.

## **8.17 WARRANTIES**

**8.17.1 GUARANTEE:** Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from date of acceptance by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it be shown that the defect was caused by misuse and not by faulty design.

**8.17.2 QUALITY:** Contractor expressly warrants that all goods or services furnished under this contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods or services furnished will conform in all respect to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors, and assigns.

**8.17.3 RESPONSIBILITY FOR CORRECTION:** It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of any call back, Contractor agrees to give the City first priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.

**8.17.4 LIENS:** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or his subcontractors in the performance of the work required under this contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make payment.

**8.17.5 QUALITY STANDARDS OF MATERIAL AND SERVICES:** If desired by the City, items or services proposed shall be subjected to testing, dissection or analysis by a recognized testing laboratory or consultant selected by the City to determine that the material(s) submitted for proposal conform to the proposal specifications. The cost of testing, dissection or analysis shall be borne by the Proposer.

**8.17.6 REPAIR AND REPLACEMENT PARTS:** Repair or replacement parts for existing equipment may be accomplished by the Contractor using other than original equipment manufacturer's (OEM) parts. However, all parts or equipment furnished must be equal or exceed that of the original equipment manufacturer(s) in material and warranty.

**8.17.7 WORKMANSHIP:** Where not more specifically described in any of the various sections of these specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction or installation regularly furnished or required for completion of the services. All work shall be executed by personnel skilled in their respective lines of work.

## **8.18 CITY'S CONTRACTUAL RIGHTS**

**8.18.1 RIGHT TO ASSURANCE:** 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 (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

**8.18.2 NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.

**8.18.3 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.

**8.18.4 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 Proposer.

**8.18.5 DEFAULT:** In case of default by the Proposer, 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 proposal and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

**8.18.6 COVENANT AGAINST CONTINGENT FEES:** Contractor warrants that no person or 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 shall 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.

**8.18.7 ESTIMATED QUANTITIES OR DOLLAR AMOUNTS:** 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 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. Any demand or order made by any employee or officer of the City of Prescott, other than the designated representative, for quantities in excess of the estimated quantities and dollar amounts shall be void if the written approval was not received prior to the Contractor's performance.

**8.18.8 COST JUSTIFICATION:** In the event only one response is received, the City may require that the Proposer submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the proposal price is fair and reasonable.

**8.18.9 REJECTION OF PROPOSALS:** The City reserves the right to reject any and all Proposals and to waive any immaterial defects and irregularities in Proposals.

## **8.19 CONTRACT TERMINATION**

**8.19.1 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 shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

**8.19.2 CONDITIONS AND CAUSES FOR TERMINATION:** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days 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 shall 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 shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

- 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 give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

The Contractor shall continue to perform in accordance with the requirements of the Contract, up to the date of termination as directed in the termination notice.

**8.19.3 CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Prescott pursuant to the provision of Section 38-511, Arizona Revised Statutes.

**8.19.4 CONTRACTOR'S PERFORMANCE:** Contractor shall use those efforts which a skilled, competent, experienced, and prudent person or organization would use to perform and complete the requirements of this Contract in a timely and professional manner conforming to the standards and quality generally recognized and accepted within the profession throughout the United States. Contractor shall furnish all necessary labor, tools, equipment, and supplies to perform the required services.

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 shall notify the Contractor.

The Contractor will have ten (10) days from that time to correct any specific instances of unsatisfactory performance. In the event the unsatisfactory performance is not corrected within the time specified above, the City shall have the immediate right to complete the work to its satisfaction and shall 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 Contract for default.

**8.20 PERFORMANCE BOND:** Contractor shall provide within ten (10) days after notice of award, and maintain at all times, a valid performance bond for Seven Hundred and Fifty Thousand Dollars (\$750,000.00). The bond shall be issued for a period of not less than one year and the Contractor shall provide a new bond, or evidence satisfactory to the City of the Contractor's bond renewal at least sixty (60) days before the bond then in effect expires. The initial bond shall be in place on or before the effective date of the contract.

The bond shall be for the use and benefit of the City, with a surety company authorized to do business in the State of Arizona and acceptable to the City. Said bond shall be conditioned that Contractor shall faithfully perform all of the provisions of this Agreement. Said bond shall contain appropriate recitations that it is issued pursuant to this Section of this Agreement, that it shall be construed to meet all requirements specified herein and that any condition or limitation in such bond which is in conflict with the conditions and requirements of this Section is void. Such bond shall be submitted to and subject to approval of the City prior to its effective date.

In lieu of a performance bond, the City may, upon request of the Contractor, give its approval for the Contractor to obtain an irrevocable letter of credit from a banking institution licensed to do business in the State of Arizona. The terms and conditions of such letter of credit shall be subject to the approval of the City.

**8.21 INSURANCE REQUIREMENTS:** Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

**8.21.1 MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall 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 minimum liability requirements provided that the coverage is written on a "following form" basis.

**Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Complete Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

**Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limits (CSL)	\$1,000,000
------------------------------	-------------

The policy shall be endorsed to include the following additional insured language: "The City of Prescott" shall be named as an additional insured with respect to liability arising out of the activities contained in this contract.

**Worker's Compensation and Employers' Liability**

Workers' Compensation and Statutory  
Employers' Liability

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

Policy shall contain a waiver of subrogation against the City of Prescott.

This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23- 901, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

**8.21.2 ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

- On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**8.21.3 NOTICE OF CANCELLATION OF INSURANCE:** For each insurance policy required by the insurance provisions of this contract, the Contractor must provide to the City, within two (2) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed to Field and Facilities Services Director, City of Prescott Field and Facilities Services Department, 2800 Sundog Road, Prescott, Arizona 86301.

**8.21.4 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 above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

**8.21.5 VERIFICATION OF COVERAGE:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. 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 before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Contract Specialist named in this document. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

**8.21.6 SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies or Contractor shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

**8.21.7 APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be approved by the Legal Department, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

**SECTION NINE-FORMS**

***Form A – Solicitation Response Cover Sheet***

Description: Solid Waste Hauling Services

Please note all that apply:

- Addenda Number(s) Received (if any)
- Original Forms A through G

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Business Phone: (\_\_\_\_) \_\_\_\_\_

Business Fax: (\_\_\_\_) \_\_\_\_\_

Business Contact: \_\_\_\_\_

Comments: \_\_\_\_\_

**Dated this \_\_\_\_ day of \_\_\_\_\_ 2016.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

**Form B-Price Sheet**

**ALL OR NONE PROPOSAL PRICE SCHEDULE AND DELIVERY SCHEDULE**

**Note:** Prices offered shall not include state and local taxes.  
For the purposes of determining the lowest cost, the City will not take tax into consideration.  
 Taxes must be listed as a separate item on all invoices, if applicable.

<u>Description</u>	<u>Ton Price-Operations</u>	<u>Fuel Price</u>	<u>Total Ton Price + Fuel</u>
<b>Item 1:</b> Ton Price for Hauling Solid Waste to GWL	\$ _____/Ton	\$ _____/Ton	\$ _____/Ton
<b>Item 2:</b> Ton Price for Hauling Recyclables to the North Gateway Station Facility (NGTS)	\$ _____/Ton	\$ _____/Ton	\$ _____/Ton

**Form C – Bid Certification**

**Name:** \_\_\_\_\_

**The undersigned Proposer hereby certifies as follows:**

**C.1** That he/she has read the City of Prescott’s solicitation documents, its appendices and attachments, and the Addenda, and to the best of his/her knowledge, has complied with the mandatory requirements stated therein.

<b>Addendum</b>	<b>Date</b>
_____	_____
_____	_____

**C.2** That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

- C.3** That the Proposer’s bid consists of the following:
1. Form A – Solicitation response cover sheet
  2. Form B – Price Sheet
  3. Form C – Bid Certification
  4. Form D – Non-Collusion Certificate
  5. Form E – Certificate of Ownership
  6. Form F – Proposer Qualifications, Representations and Warranties
  7. Form G – References

**C.4** That the proposal is valid for 180 days.

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

***Form D – Non-Collusion Certificate***

**Name:** \_\_\_\_\_

**The undersigned Proposer hereby certifies as follows:**

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a bid to the City of Prescott for consideration in the award of this solicitation.

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

***Form E – Certificate of Ownership***

**Name:** \_\_\_\_\_

**The undersigned Proposer hereby certifies as follows:**

To the best of his/her knowledge, the person, firm, association, partnership or corporation herein, are the only person, firms, corporations, partnerships, or other associations having any direct or indirect financial interest in the Proposer’s business as legal or equitable owner, creditor (except current bills for operating expenses), or holder of any security or other evidence of indebtedness.

**Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

**Form F – Proposer Qualifications, Representations and Warranties**

Name: \_\_\_\_\_

The undersigned Proposer hereby certifies as follows:

**F1 Meets Minimum Specifications**

	YES	NO
Furnish and install all labor, materials, equipment and services to complete the Specifications and Scope of Work.		

**F2 Taxes and Liens** - Proposer has no unsatisfied tax, judgment lien or disbarment on record.

**F3 Subcontractors** – Proposer submits as **Attachment 1** to this Bid Form F a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm’s name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Proposer shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.

Note: The evaluators may contact the customer references, as well as any other customers or customer employees including the City of Prescott. A proposer with unsatisfactory references may have its bid rejected.

**F4 Proposers Examination** - Proposer has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Proposer fully understands the character of the work and services, the manner in which payment is to be made, the terms and conditions of the draft agreement, and the solicitation. Proposer acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that it will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Proposer hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as bid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016. \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

***Form G-References***

The City will enter into an agreement only with a proposer(s) having a reputation of satisfactory performance. The proposer's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Proposer provides information for three clients, other than the City of Prescott, that presently contract with the proposer for similar goods or services:

State your firm's experience in providing services to public entities or corporate entities, list all other government contracts that you have now or have had in the past five years.

Reference#1

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail \_\_\_\_\_

Reference#2

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail \_\_\_\_\_

Reference #3

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail \_\_\_\_\_

**CONTRACTOR LICENSING REQUIREMENTS**

Proposer's shall comply with all statutes and rules of the State of Arizona and the Registrar of Contractors. In accordance with A.R.S. § 32-1151, and unless otherwise exempted by A.R.S. § 32-1121, Proposer's should have the correct class of license as required by the Registrar of Contractors for the work specified, prior to the submission of a bid. The Proposer certifies possession of the following license:

Licensed Contractor's Name \_\_\_\_\_

Class \_\_\_\_\_

License Number \_\_\_\_\_

Expiration Date \_\_\_\_\_



**GENERAL SERVICES CONTRACT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
by and between \_\_\_\_\_ of the  
City of \_\_\_\_\_, County of \_\_\_\_\_,  
State of \_\_\_\_\_, hereinafter designated “Contractor”, and the City of  
Prescott, a municipal corporation, organized and existing under and by virtue of the laws of the  
State of Arizona, hereinafter designated “City”.

WITNESSETH: That the said Contractor, for and in consideration of the sum to be paid him by  
the said City, and of the other covenants and agreements herein contained, and under the penalties  
expressed in the bonds provided, hereby agrees, for himself, his heir, executors, administrators,  
successors and assigns as follows:

**ARTICLE I - SCOPE OF WORK:** The Contractor shall furnish any and all labor, materials,  
equipment, transportation, utilities, services and facilities, required to perform all work for the  
construction of the project described as City of Prescott:

\_\_\_\_\_,  
in a good and workmanlike and substantial manner and to the satisfaction of the City through its  
Contractors and under the direction and supervision of the \*\* Director, or his properly authorized  
agents and strictly pursuant to and in conformity with the Plans and Specifications prepared by  
the Contractors for the City, and with such written modifications of the same and other  
documents that may be made by the City through the \*\* Director or his properly authorized  
agents, as provided herein.

**ARTICLE II - CONTRACT DOCUMENTS:** The Notice Inviting Bids, Plans, Standards  
Specifications and Details, Special Conditions, Addenda, if any, and Proposal as accepted by the  
Mayor and Council per Council Minutes of \_\_\_\_\_, Performance Bond,  
Payment Bond, Bid Bond, Certificate of Insurance and Contract Amendments, if any, are by this  
reference made a part of this Contract to the same extent as if set forth herein in full.

**ARTICLE III - TIME OF COMPLETION:** The initial term of the contract shall be for a  
period of \_\_\_\_\_ years. The contract may be extended for additional \_\_\_\_\_ year periods

up to a total of \_\_\_\_\_ additional years, with the mutual consent of the City of Prescott and Contractor. Price changes for succeeding years shall be adjusted in accordance with the Consumer Price Index (CPI), not to exceed upwards or downwards of three (3) percent.

**ARTICLE IV - COMPENSATION:** Contractor shall be paid, pursuant to the provisions as set forth in the Contract documents, the total sum of

\_\_\_\_\_ dollars and no cents (\$ 000.00) plus any approved contract amendments, for the full and satisfactory completion of all work as set forth in the Project Specifications and Contract Documents. Retention shall be in accordance with Arizona Revised Statutes Section 34-221.

**ARTICLE V - CONFLICT OF INTEREST:** Pursuant to ARS Section 38-511, the City of Prescott may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the contract on behalf of the City of Prescott is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the City of Prescott further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating this contract on behalf of the City of Prescott from any other party to the contract, arising as a result of this contract.

**ARTICLE VI - AMBIGUITY:** This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.

**ARTICLE VII - NONDISCRIMINATION:** The Contractor, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, the Americans With Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, and Arizona Governor Executive Orders 99-4, 2000-4 and 2009-09 as amended.

**ARTICLE VIII - INDEPENDENT CONTRACTOR STATUS:** It is expressly agreed and understood by and between the parties that the Contractor is being retained by the City as an independent contractor, and as such the Contractor shall not become a City employee, and is not entitled to payment or compensation from the City or to any fringe benefits to which other City employees are entitled other than that compensation as set forth in Article IV - Compensation above. As an independent contractor, the Contractor further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the City by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee

of the City, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

**ARTICLE IX - CITY FEES:** Prior to final payment to the Contractor, the City shall deduct there from any and all unpaid privilege, license and other taxes, fees and any and all other unpaid moneys due the City from the Contractor, and shall apply to those moneys to the appropriate account. Contractor shall provide to the City any information necessary to determine the total amount(s) due.

**ARTICLE X- OTHER WORK IN PROJECT AREA:** The City of Prescott, any other contractors, whether under contract with the City, a third party, and/or utilities, may be working within the project area while this Contract is in progress. The Contractor herein acknowledges that delays and disruptions may, and in all likelihood, will occur due to other work. The Contractor's bid shall be deemed to have recognized and included costs arising from and associated with other work in the project area disclosed by the Contract Documents or which would be apparent to an experienced contractor exercising due diligence during inspection of the project documents, the question and answer session in the pre-bid process or during site inspection. No payment will be made for any delays or disruptions in the work schedule that are wholly the fault of the contractor, its agents, employees or any of the contractor's subcontractors. In the event that the contractor encounters delay or disruption in the project schedule due to factors not wholly the fault of the contractor or within the contractors control then the Contract may be adjusted pursuant to the Delay's and Extension of Time provisions of this Contract and a timely request submitted for Contract Amendment. Failure to submit a timely request for Contract Amendment shall be deemed a waiver of any entitlement to additional compensation.

#### **ARTICLE XI – BONDS**

A. On or before the execution of the contract, the Contractor shall obtain in an amount equal to the full contract price a performance bond pursuant to ARS Section 34-222, conditioned upon the faithful performance of this contract in accordance with the plans, specifications and conditions herein. Such bond shall be solely for the protection of the City of Prescott. A copy of this bond shall be filed with the Prescott City Clerk.

B. Contractor shall also obtain a payment bond, pursuant to the provisions of ARS Section 34-222, in an amount equal to this full contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the Contractor or his subcontractors in the prosecution of the work provided for in this contract. A copy of this bond shall be filed with the Prescott City Clerk.

C. All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond. In addition, depending upon the nature of the contract and amount thereof, the City Manager may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, US Treasury Department.

**ARTICLE XII – MISCELLANEOUS**

- A. 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. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project, which is the subject of this Agreement.
- B. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other state or federal statute, court rule, case law or common law. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.
- C. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage, at the following addresses:

** Director	**
City of Prescott	**
Prescott, AZ 86301	**

- D. This Agreement is non-assignable by the Contractor unless by subcontract, as approved in advance by the City.
- E. This Agreement shall be construed under the laws of the State of Arizona.
- F. This Agreement represents the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- G. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- H. INDEMNIFICATION: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract, Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees that arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.
- I. No oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall

be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver or modification shall be introduced in any proceeding.

- J. **INSURANCE:** Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

**Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Prescott is named as an additional insured, the City of Prescott shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

**Notice of Cancellation:** With the exception of a ten (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require a thirty (30) day written notice.

**Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the City of Prescott Risk Management Division. .  
**Verification of Coverage:** Contractor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. 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 before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the contract. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to the \*\* at \*\*, Prescott, AZ 86301. The City contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

**Insurance Requirements -** Contractor shall 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 minimum liability requirements provided that the coverage is written on a following form basis.

Commercial General Liability – Occurrence Form:

Policy shall include bodily injury, property damage, personal injury, broad form contractual liability coverage.

- General Aggregate  
\$ 2,000,000
- Products – Completed Operations Aggregate \$ 1,000,000
- Personal and Advertising Injury \$ 1,000,000
- Each Occurrence  
\$ 1,000,000
- Fire Legal Liability (Damage to Rented Premises) \$ 100,000

The policy shall be endorsed to include the following additional insured language:

"The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Contractor".

Business Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)  
\$1,000,000

The policy shall be endorsed to include the following additional insured language:

"The City of Prescott shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

Worker’s Compensation and Employer’s Liability:

Workers’ Compensation	Statutory
Employer’s Liability	
Each Accident -	\$1,000,000
Disease – each employee -	\$1,000,000
Disease – policy limit -	\$1,000,000

Policy shall contain a waiver of subrogation against the City of Prescott for losses arising from work performed by or on behalf of the Contractor.

All insurance required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS Section 20-217, a copy of which certificate is to be attached to each applicable bond or binder.

Prior to commencing work under this Agreement, the Contractor shall provide City with evidence that it is either a “self-insured employer” or a “carrier insured employer” for Workers’ Compensation as required by ARS 23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

K. Contractor Immigration Warranty

Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with

A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, as amended, “Residence Requirements for Employees”.

Under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors (“Subcontractors”) will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter “Contractor Immigration Warranty”).

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any Contractor or Subcontractors employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

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

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

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

- L. In the event of a discrepancy between this Agreement and other documents incorporated into this Agreement this Agreement shall control over such other incorporated documents.
- M. Non-Availability of Funds: Fulfillment of the obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the date and year first above written.

ATTEST:

\_\_\_\_\_  
Witness, if Contractor is an Individual

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

Title: \_\_\_\_\_

City of Prescott, a municipal corporation

\_\_\_\_\_  
Harry B. Oberg, Mayor

Attest:

Approved as to Form:

\_\_\_\_\_  
Dana R. DeLong, City Clerk

\_\_\_\_\_  
Jon M. Paladini, City Attorney