

AGREEMENT FOR
SECONDARY LANDFILL HEAVY EQUIPMENT
MAINTENANCE AND REPAIRS

City of Glendale Solicitation No.

This Agreement for Secondary Landfill Heavy Equipment Maintenance and Repairs ("Agreement") is effective and entered into between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Truck Repair Phoenix, an Arizona limited liability corporation, authorized to do business in Arizona, (the "Contractor"), as of the 24 day of November, 2014

RECITALS

- A City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A**, pursuant to Solicitation No. IFB 15-11 (the "Project"),
- B. City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C City and Contractor desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows

1. Key Personnel; Sub-contractors.

- 1 1 Services Contractor will provide all services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors or consultants, retained by City.
- 1 2 Project Team
 - a Project Manager
 - (1) Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's option, complete the Project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement,
 - (2) The City must approve the designated Project Manager, and
 - (3) To assure the Project schedule is met, Project Manager may be required to devote no less than a specific amount of time as set out in Exhibit A
 - b Project Team.
 - (1) The Project Manager and all other employees assigned to the project by Contractor will comprise the "Project Team "
 - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the Project by Contractor.

c. **Discharge, Reassign, Replacement.**

- (1) Contractor acknowledges the Project Team is comprised of the same persons and roles for each as may have been identified in the response to the Project's solicitation.
- (2) Contractor will not discharge, reassign or replace or diminish the responsibilities of any of the employees assigned to the Project who have been approved by City without City's prior written consent unless that person leaves the employment of Contractor, in which event the substitute must first be approved in writing by City.
- (3) Contractor will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties or if the acts or omissions of that person are detrimental to the development of the Project.

d. **Sub-contractors.**

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions.
- (2) Contractor will remain fully responsible for Sub-contractor's services.
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation.
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement.

2. **Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project.

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 **Licensing.** Contractor warrants that:

- a. Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
 - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability.
 - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default under the Agreement.

3.3 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, and other standards and criteria designated by City.

3.4 **Coordination; Interaction.**

- a. For projects that the City believes requires the coordination of various professional services, Contractor will work in close consultation with City to proactively interact with

any other professionals retained by City on the Project ("Coordinating Project Professionals").

- b. Subject to any limitations expressly stated in the Project Budget, Contractor will meet to review the Project, Schedule, Project Budget, and in-progress work with Coordinating Project Professionals and City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion.
- c. For projects not involving Coordinating Project Professionals, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project.

3.5 Work Product

- a. **Ownership.** Upon receipt of payment for services furnished, Contractor grants to City, and will cause its Sub-contractors to grant to the City, the exclusive ownership of and all copyrights, if any, to evaluations, reports, drawings, specifications, project manuals, surveys, estimates, reviews, minutes, all "architectural work" as defined in the United States Copyright Act, 17 U.S.C § 101, *et seq.*, and other intellectual work product as may be applicable ("Work Product").
 - (1) This grant is effective whether the Work Product is on paper (e.g., a "hard copy"), in electronic format, or in some other form.
 - (2) Contractor warrants, and agrees to indemnify, hold harmless and defend City for, from and against any claim that any Work Product infringes on third-party proprietary interests.
- b. **Delivery.** Contractor will deliver to City copies of the preliminary and completed Work Product promptly as they are prepared.
- c. **City Use.**
 - (1) City may reuse the Work Product at its sole discretion.
 - (2) In the event the Work Product is used for another project without further consultations with Contractor, the City agrees to indemnify and hold Contractor harmless from any claim arising out of the Work Product.
 - (3) In such case, City shall also remove any seal and title block from the Work Product.

4. **Compensation for the Project.**

4.1 **Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$50,000 per fiscal year, or a maximum of \$250,000 if the City exercises all renewal options contemplated in Section 13 (Term) of this agreement, as specifically detailed in **Exhibit B** (the "Compensation").

4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified.

- a. Adjustments to the Compensation require a written amendment to this Agreement and may require City Council approval.
- b. Additional services which are outside the scope of the Project contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.
- c. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

5. Billings and Payment.

5.1 Applications.

- a. Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.
- b. The period covered by each Payment Application will be one calendar month ending on the last day of the month or as specified in the solicitation.

5.2 Payment.

- a. After a full and complete Payment Application is received, City will process and remit payment within 30 days.
- b. Payment may be subject to or conditioned upon City's receipt of:
 - (1) Completed work generated by Contractor and its Sub-contractors; and
 - (2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 Review and Withholding. City's Project Manager will timely review and certify Payment Applications.

- a. If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.
- b. City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

6. Termination.

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- a. Contractor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

6.2 For Cause. City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- a. Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages, in accordance with the provision of § 5.
- b. If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand; however, Contractor will not be subject to consequential damages of more than \$1,000,000 or the amount of this Agreement, whichever is greater.

7. Conflict. Contractor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

8. Insurance.

8.1 Requirements. Contractor must obtain and maintain the following insurance ("Required Insurance"):

- a. Contractor and Sub-contractors. Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Contractor's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
 - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
 - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.
 - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
 - (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.
- d. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- e. Notice of Changes. Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
 - (1) Cancellation or termination of Contractor or Sub-contractor's Policies;
 - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies; and
 - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement.
- f. Certificates of Insurance.
 - (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section.
 - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section.
 - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under the Agreement.

- g. Other Contractors or Vendors.
 - (1) Other contractors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
 - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- h. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
 - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
 - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-contractors.

- a. Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance.
- b. City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement.
- c. Contractor and Sub-contractors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- a. To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible.
- c. Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. Immigration Law Compliance.

- 9.1 Contractor, and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 9.1 above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 9.6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

10. Notices.

- 10.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
 - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
 - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
 - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
 - (2) As of the next business day after receipt, if received after 5:00 p.m.
 - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
 - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

- a. Contractor. Contractor's representative (the "Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is:

c/o Daniel Honea, CEO
Truck Repair Phoenix, LLC
1025 N. 2ND Avenue
Phoenix, AZ 85003
928-380-4762

- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:

City of Glendale
c/o Ernie Ruiz Jr., Solid Waste Superintendent LF-MRF
6210 W. Myrtle, Suite 111
Glendale, Arizona 85301
623-930-4722

With required copy to:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- c. Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- d. Changes. Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

11. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project.

12. **Entire Agreement; Survival; Counterparts; Signatures.**

12.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

- c. The solicitation, any addendums and the response submitted by the Contractor are incorporated into this Agreement as if attached hereto. Any Contractor response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums and the response or any excerpts attached as Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement.

12.2 Interpretation.

- a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.

12.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement

12.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution

12.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

12.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.

12.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument

13. **Term.** The term of this Agreement commences upon the effective date and continues for a one (1)-year initial period. The City may, at its option and with the approval of the Contractor, extend the term of this Agreement an additional four (4) years in one-year increments, renewable on an annual basis. Contractor will be notified in writing by the City of its intent to extend the Agreement period at least 30 calendar days prior to the expiration of the original or any renewal Agreement period. Price adjustments will only be reviewed during the Agreement renewal period and will be a determining factor in the decision regarding renewal. There are no automatic renewals of this Agreement.

14. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.

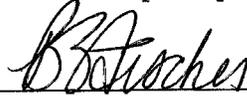
15. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

- Exhibit A Project
- Exhibit B Compensation
- Exhibit C Dispute Resolution

(Signatures appear on the following page.)

The parties enter into this Agreement as of the effective date shown above.

City of Glendale,
an Arizona municipal corporation



By: Brenda S. Fischer
Its: City Manager

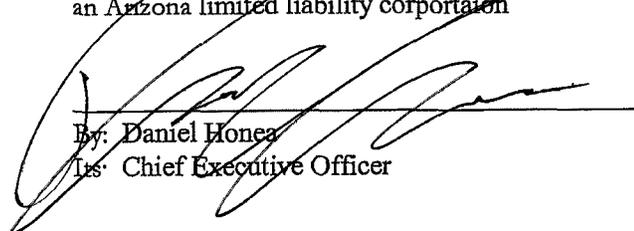
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

Truck Repairs Phoenix, LLC,
an Arizona limited liability corporation



By: Daniel Honea
Its: Chief Executive Officer

EXHIBIT A
IFB 15-11
PROJECT

[See attached]



EXHIBIT A

CITY OF GLENDALE MATERIALS MANAGEMENT INVITATION FOR BIDS

SOLICITATION NUMBER: IFB 15-11

DESCRIPTION: SECONDARY LANDFILL HEAVY EQUIPMENT
MAINTENANCE & SERVICE

OFFER DUE DATE AND TIME: AUGUST 21, 2014, AT 2:00 P.M. LOCAL TIME

Offers for the materials or services specified shall be received by the City of Glendale, Materials Management at the specified due date, time and location. Offers received by the correct time and date will be opened and the name of each bidder and the amount of the bid will be publicly read.

SUBMITTAL LOCATION: City of Glendale
Materials Management
5850 West Glendale Avenue, Suite 317
Glendale, Arizona 85301

Offers must be in the actual possession of Materials Management on or prior to the time and date, and at the location indicated above. Materials Management is located on the 3rd floor of the Glendale Municipal Office Complex (City Hall) behind the Engineering Department. Offers are accepted from the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, unless otherwise indicated for a holiday. All offers will be time stamped at the Engineering Department's front counter. Late offers will not be considered.

Offers must be submitted in a sealed envelope with the Solicitation Number and the Offeror's name and address clearly indicated on the envelope. See Paragraph 2.3 for additional instructions for preparing an offer.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION PRIOR TO SUBMITTING THEIR BIDS.

For questions regarding this solicitation, please contact:
Elmer Garcia, CPPB
Contract Analyst
623-930-2866
Egarcia1@glendaleaz.com

	<p>Solicitation Number: IFB 15-11</p> <p>SECONDARY LANDFILL HEAVY EQUIPMENT MAINTENANCE & SERVICE</p>	<p>CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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1.0 SPECIFICATIONS

1.1 INTRODUCTION

1.1.1 The City of Glendale (“City”) intends to enter into a contract with a qualified Contractor to conduct regular preventative maintenance services to the City’s heavy duty landfill equipment. All work specified shall be completed under the direction and satisfaction of the Landfill Operations.

1.2 SCOPE OF WORK

1.2.1 All materials and supplies will be provided by the City necessary to perform the secondary preventative maintenance services.

1.2.2 Secondary preventative maintenance services and inspections shall be conducted on, but not limited to, the following equipment: Caterpillar D8T, Caterpillar D9R, Caterpillar Scarper 637G, Caterpillar Loader 950G, Caterpillar Compactor 836H, Caterpillar Water Pull 730, Caterpillar Motor Grader 12M2 and Aljon Compactor 91K..

1.2.3 The City Landfill Operations reserves the right to amend the list of heavy equipment when deemed necessary.

1.2.4 Maintenance services and inspections shall be completed as requested and in accordance with manufacturer’s recommendations and warranty requirements.

1.2.5 Contractor must provide an estimate of cost and timeframe for work before any repairs/maintenance service shall be performed on any City Landfill equipment.

1.2.6 Contractor turnaround time for standard repairs and maintenance shall be 24 hours. If Contractor is unable to meet reasonable turnaround time for critical-use equipment, the City reserves the right to outsource the work to another vendor and deduct the cost from the Contractor’s invoice.

1.2.7 Contractor must provide a minimum of 6 months warranty for labor services provided to the City.

1.2.8 If parts and supplies are not provided by the city. The contractor replacement parts shall be priced based on percentage markup. If no receipt is provided by the Contractor, the City will pay market price for the replacement parts.

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1.2.9 Maintenance services and inspections shall be performed onsite at the City of Glendale Landfill located at 11480 W. Glendale Avenue, Glendale, AZ 85307.

1.2.10 Travel charges will be allowable for technician on-site trips. However, the City will not pay travel charges for technician if work is performed off-site at the Contractor's location.

1.3 CONTRACTOR REQUIREMENTS

1.3.1 The Contractor shall have at least five (5) years of experience in providing landfill heavy equipment maintenance services.

1.3.2 Contractor shall have certified heavy equipment technician on staff to perform heavy equipment maintenance services for the City.

1.3.3 The Contractor shall maintain in current status all Federal, State, County and Local licenses and permits required to operate the Contractor's business.

1.3.4 The Contractor shall comply with Occupational Safety and Health Administration (OSHA) standards during the performance of all contracted services.

1.3.5 Contractor must have operational vehicles and equipment capable of performing maintenance service on weekends and after business hours.

1.3.6 Contractor must have means of moving/hauling City heavy equipment to Contractor's location if on-site repair is not possible.

1.3.7 Contractor should be available on NORMAL BUSINESS HOURS (Monday through Friday, 5:00 AM to 4:00 PM), AFTER BUSINESS HOURS and weekends. The City observes the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving and Christmas.

1.3.8 Contractor shall return calls for service within two (2) hours during NORMAL BUSINESS HOURS and shall respond to request for service within 24 hours. Contractor shall also respond to service after our service calls within (24) hours.

1.3.9 The Contractor shall have a 24-hour contact telephone for emergency services.

1.3.10 No work shall be performed by Contractor without prior approval of the Landfill Supervisor and/or Sr. Mechanic Specialist.

 <p>GLENDALÉ</p>	<p>Solicitation Number: IFB 15-11</p> <p>SECONDARY LANDFILL HEAVY EQUIPMENT MAINTENANCE & SERVICE</p>	<p>CITY OF GLENDALE Materials Management 5850 West Glendale Avenue, Suite 317 Glendale, Arizona 85301</p>
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1.3.11 In the absence of the City Landfill mechanic and when requested by Landfill Operations, the Contractor must be available to perform onsite maintenance services full-time for an interval of one or two weeks.

1.3.12 All of the Contractor's materials, techniques and processes used for this contract shall comply with all Federal, State, local laws, regulations, permits, standards and ordinances pertaining to health, safety and environmental protection.

1.3.13 The Contractor's failure to comply with Federal, State and local laws shall be sufficient grounds for non-payment and immediate termination of contract.

1.4 HAZARD AND SAFETY REPORTING

1.4.1 The City through its designees, reserves the right to issue immediate restraints or cease or desist orders to Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under the contract.

1.4.2 The Contractor shall report immediately to the Landfill Supervisor, or designee, all hazardous conditions in the City contract areas.

1.5 SERVICE ADDITIONS/INTERRUPTIONS/END OF CONTRACT CONDITIONS

1.5.1 The City reserves the right to add or delete necessary services and equipment during the contract period.

1.5.2 In the event of such a substitution or deletion of service areas, the City will give the Contractor 10-days notice prior to date of discontinuance of maintenance services and responsibilities.

1.5.4 The Contractor shall not be compensated for the loss of work due to deletions or substitutions.

1.5.5 In the event the City and the Contractor cannot agree on additional service charges, the City reserves the right to perform the additional services with City personnel, or other outside contract services.

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1.6 WORK REPORT

1.6.1 The Contractor should prepare a written summary report covering the maintenance activities along with invoices for payment and submit these documents to the Landfill Supervisor, or designee in a timely basis.

1.7 WASTE

1.7.1 The Contractor, at his expense, shall remove and dispose waste products and debris resulting from onsite service in compliance with Federal, State, County and City laws and regulations. Contractor should factor in the environmental fees in their contract price.

1.8 DEFICIENCIES IN WORK, PENALTIES AND REMEDIES

1.8.1 When damages to City property occurs as a result of Contractor's negligence, the City will arrange for repairs to be made and the costs for making repairs to the areas will be deducted from final payments to the Contractor.

1.8.2 In the event the Contractor's performance does not meet one or more of the performance standards described herein, the Contractor will be given written notice setting forth the deficiencies to be corrected to the Landfill Supervisor's approval.

1.8.3 In the event the Contractor has been notified of a deficiency and the deficiency is not corrected, Landfill Operations may perform the services using city personnel or by a separate contract. The cost for follow-up inspections and of the services performed may be deducted from the Contractor's monthly invoice.

1.8.4 Failure to correct the deficiency within a reasonable timeframe may result in termination of the contract for default.

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2.0 SPECIAL TERMS AND CONDITIONS

2.1 INCORPORATION BY REFERENCE All responses shall incorporate by reference the Specifications, terms and conditions, general instructions and conditions and any attachments. The Standard Terms and Conditions applicable to this solicitation are posted on the Internet. They are available for review and download at the City’s Materials Management Internet home page, www.glendaleaz.com/purchasing. Offerors are advised to review all provisions of the General Instructions and Conditions for this solicitation.

2.2 RETURN OF OFFER One (1) original copy of the proposal response and one (1) flash drive or CD-ROM containing all original documents shall be submitted. The original copy of the proposal should be clearly labeled “Original” and shall be single-sided.”

The Offeror shall complete all sections of the IFB in the format and spaces provided. If additional space is needed than what is given, enter “See attachment for detail.”

2.3 PREPARATION OF OFFER PACKAGE The following items shall be completed and returned. Failure to include all the items may result in an offer being rejected. Offer packages shall be submitted in the following order:

- 2.3.1 OFFER SHEET**, Section 4.0
- 2.3.2 PRICE SHEET**, Section 5.0
- 2.3.3 SOLICITATION ADDENDUM**, (if applicable).
- 2.3.4 SPECIFICATIONS AND ADDITIONAL SUBMISSION REQUIREMENTS**, Section 1.0 and 3.0.

2.4 ALTERNATE OFFERS/EXCEPTIONS Offers submitted as alternates, or on the basis of exceptions to specific conditions of purchase and/or required specifications, must be submitted as an attachment referencing the specific paragraph number(s) and adequately defining the alternate or exception submitted. Detailed product brochures and/or technical literature, suitable for evaluation, must be submitted with the offer. If no exceptions are taken, City will expect and require complete compliance with the specifications and all conditions of purchase.

2.5 EVALUATION CRITERIA Invitation for Bids are awarded to the lowest responsible and responsive bidder whose bid conforms in all material respect to the requirements and criteria set forth in the Invitation for Bids.

2.6 INQUIRIES Any question related to the Invitation for Bid shall be directed to the Contract Officer whose name appears above. A Contractor shall not contact or ask

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questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Contractors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the proposal due date. Any correspondence related to a solicitation should refer to the appropriate IFB page and paragraph number. An envelope containing questions should be identified as such; otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the IFB will be binding.

- 2.7 PRICE** All prices quoted shall be firm and fixed for the specified contract period. All pricing shall be firm for the initial term of one (1) year and include all freight, insurance, warranty and any other associated direct or indirect costs, except taxes. The City shall not be invoiced at prices higher than those stated in any contract resulting from this bid.

The Contractor certifies that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions. The Contractor further agrees that any reductions in the price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The Contractor shall promptly notify the City of such price reductions.

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

- 2.8 FOB POINT** Prices quoted shall be FOB destination to: City of Glendale.
- 2.9 TERM OF AGREEMENT** The initial term of the contract shall be one (1) year upon approval by the City Council.
- 2.10 OPTION TO EXTEND** The City may, at its option and with the approval of the Contractor, extend the term of this agreement for four (4) additional years in one (1) year increments based on satisfactory Contractor performance. Contractor shall be notified in writing by the City Materials Manager of the City's intention to extend the contract period at least 30 calendar days prior to the expiration of the original contract period. Price adjustments will only be reviewed during contract renewal.
- 2.11 EVALUATION LITERATURE (Not applicable)**
- 2.12 INSURANCE** Contractor, performing as an independent contractor hereunder, shall be fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.

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Contractor shall provide to the City a copy of the policy or a certification by the insurance carrier along with the applicable endorsements showing the Contractor to have in effect during the term of this contract, a General Liability Insurance policy, which shall be the primary coverage for Contractor activities under this contract. The coverage limits of such insurance shall not be less than those listed below.

The insurance company issuing the policy required above shall have an AM Best financial rating of "A- VII" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the City, its officers, directors, employees, agents and assignees as an additional insured and shall be primary and non-contributory for any insurance and/or self-insurance coverage maintained by the City. The City shall also be an additional insured to the full limits of the liability insurance purchased by the Contractor even if those limits are in excess of those required by this contract.**

The City reserves the right to terminate any Contractor agreement if the Contractor fails to maintain such insurance coverage.

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Contractor must provide certification of insurance and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required below. All certificates and endorsements are to be received and approved by the City within ten (10) calendar days after notification of award. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the City.

Certification to be submitted to: Materials Management, 5850 West Glendale Avenue, Suite 317, Glendale, Arizona 85301.

Type of Insurance
(Minimum)

Limits of Liability

Workers' Compensation insurance as required by the State of Arizona, with Statutory Limits, and **Employers' Liability** insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

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Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice (**\$4,000,000**) the required occurrence limit.

Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

Additional Insured Verbiage – Applies to Commercial General Liability and Automobile Liability Insurance shall include a separate endorsement (Form CG 20 10 10 or similar) naming the City and it's board members, officials, officers, agents, and employees as additional insured's

Recommended language that your insurance company may use to describe endorsement:

The City of Glendale and its board members, officials, officers, agents, and employees are named as additional insureds under the General and Automobile Liability policies solely for liability arising out of Agreements with the City of Glendale and any operations related thereto.

Primary and Non-Contributory – All insurance carried by contractor shall be primary and non-contributory with any insurance carried by the City of Glendale. The policy must be endorsed to include this verbiage and evidence of coverage provided with the certificate.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to the contract effective date,*** the Contractor must purchase “extended reporting” coverage for a minimum of ***five (5) years*** after completion of work.

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Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention

- 2.13 **NOTICE OF INTENT TO AWARD** Information about the recommended award for this solicitation will be posted on the Internet. The information will be available for review on the City's Materials Management Internet home page www.glendaleaz.com/purchasing immediately after the City has completed its evaluation process of the offers received. If you have any questions, or would like further information about an intended award, contact the contract analyst immediately. Any protest must be submitted to the Materials Manager no later than seven (7) calendar days from the date of posting on the Internet.

- 2.14 **COOPERATIVE USE OF CONTRACT** This agreement may be extended for use by other governmental agencies and political subdivisions of the State, including all members of SAVE (Strategic Alliance for Volume Expenditures). Any such usage by other entities must be in accord with the ordinances, charter, rules and regulations of the respective entity and the approval of the Contractor and City. For a list of SAVE members, click on the following link: <http://www.maricopa.gov/Materials/save.aspx>.

- 2.15 **PERMITS AND LICENSES** The Contractor shall be responsible for determining and securing, at his/her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing products and services. Such fees shall be included in and are part of the total offer cost. During the term of the contract, the Contractor shall notify the City in writing, within two (2) working days, of any suspension, revocation or renewal.

- 2.16 **ADDITIONS/DELETIONS OF PRODUCTS OR SERVICES** The City reserves the right to add additional products to this contract when deemed necessary by the City. If this occurs, the Contractor will be requested to submit a negotiable quotation for the additions. Upon approval and authorization by the Materials Manager such additions will be added to and become a part of the contract through properly executed forms.

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

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estimated quantity shown for each quotation item shall not be exceeded by 100 % without the express written approval of the Materials Manager. Any demand or order made by any employee or officer of the City, other than the Materials Manager, for quantities in the excess of the estimated quantities shall be void if the written approval of the Materials Manager was not received prior to the Contractors performance.

- 2.18 EMERGENCY BUSINESS SERVICES** During a natural disaster, or homeland security event, there may be a need for the City to access your business for products or services twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. The need could be for a pick up or a delivery.

For this purpose, a primary and secondary emergency contact name and phone number are required from the Contractor. It is critical to the City that the contactor's emergency contact information remains current. The Materials Management staff member, identified on page 1, is to be contacted by E-mail with any change to a contact name or phone number.

All products or services provided to meet an emergency phone request are to be supplied as per the contract prices, terms and conditions. The Contractor may provide the fee (pricing) for an after-hours emergency opening of the business separate from the Price Sheet (Section 5.0). In general, the order will be placed using a City Procurement Card. The billing is to include the emergency opening fee, if applicable.

- 2.19 PUBLIC RECORD** Contractor acknowledges that the City is a public agency and must comply with all Public Records laws. All proposals submitted in response to the Solicitation shall become the property of the City and, subsequent to award recommendation, become a matter of public record available for review pursuant to Arizona Public Records Law.

If a Contractor believes that a specific section of its Proposal response is confidential, that should be withheld from the public record, Contractor shall isolate the pages and mark each page confidential in a specific and clearly labeled section of its Proposal response. The Contractor shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed. The City Materials Management Division will review the material and make a determination as to the confidentiality of any of the information and/or material contained within the Submittal. In the event of a public records request for documents Contractor deems confidential, the City will notify Contractor of the request and if Contractor claims such documents are confidential, it shall be the Contractor's sole responsibility, including sole cost, to take appropriate action, including legal action, to protect such documents.

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2.20 NO CONTACT, NO INFLUENCE DURING THE RFP OR IFB PROCESS The City is conducting a competitive bidding process for the contract, free from improper influence or lobbying. There shall be no contact concerning this solicitation from Contractors submitting an offer with any member of the City Council, Evaluation Committee Members, or anyone connected with the process for or on behalf of the City. Contact includes direct or indirect contact by the Contractor, its employees, attorneys, lobbyists, surrogates, etc. in an attempt to influence the bidding process.

From the time the RFP or IFB is issued until the expiration of the protest period or the resolution of any protest, whichever is later (the "Black-Out Period"), Contractors, directly or indirectly through others, are restricted from attempting to influence in any manner the decision making process through, including but not limited to, the use of paid media; contacting or lobbying the City Council or City Manager or any other City employee (other than Material Management employees); the use of any media for the purpose of influencing the outcome; or in any other way that could be construed to influence any part of the decision-making process about this RFP or IFB. This provision shall not prohibit a Contractor from petitioning an elected official or engaging in any other protected first amendment activity after the protest period has run or any protest has been resolved, whichever is later.

Violation of this provision will cause the proposal or offer of the Contractor to be found in violation and to be rejected.

2.21 KEY PERSONNEL Contractor shall assign specific individuals to the key positions in support of the Contract. Once assigned to work under the Contract, key personnel shall not be removed or replaced without the prior written approval of the City. Upon the replacement of any key personnel, Contractor shall submit the name(s) and qualifications of any new key personnel to the City Contract Administrator or Designee. With the concurrence of the Contract Administrator or Designee, the City shall amend the Contract to reflect the name(s) of any replacement key personnel. Upon any unplanned departure of key personnel, Contractor shall immediately notify the Contract Administrator or Designee.

2.22 PROCUREMENT CARD ORDERING CAPABILITY It is the intent of the City to utilize the City's Procurement Card (i.e. MasterCard/Visa/American Express), to place and make payment for orders under this Contract. Offerors without this capability may be considered non-responsive and not eligible for award consideration.

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3.0 ADDITIONAL SUBMISSION REQUIREMENTS

3.1 Contractor shall provide three (3) references from companies for whom Contractor has provided similar products/services in the last five years. Include company name, address, phone number, email address, contract person, a description of the products/services provided.

- City Of Phoenix
OTR Tire Service Repair/Replace Contract
251 W Washington St
Phoenix, AZ 85003
(602) 262-7181
- City Of Phoenix
Lubrication Service Contract (Trash Truck and Landfill Equipment)
251 W Washing St
Phoenix, AZ 85003
(602) 262-7181
- CRST Trucking
24 Hr Mobile Repair Service Contract(AZ)
3930 16th Ave SW
Cedar Rapids, Iowa 52406

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4.0 OFFER SHEET

4.1 OFFER Offeror certifies that they have read, understand, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror also certifies that the prices offered were independently developed without consultation with any of the other Offerors or potential Offerors.

<u>Daniel Honea</u> Authorized Signature	<u>Truck Repair Phx, LLC</u> Company's Legal Name
<u>Daniel Honea</u> Printed Name Address	<u>1025 N 2nd Ave</u>
<u>CEO</u> Title	<u>Phoenix, AZ 85003</u> City, State & Zip Code
<u>928-380-4762</u> Telephone Number	<u>info@nttsrepair.com</u> Email Address
<u>info@nttsrepair.com</u> Authorized Signature Email Address	<u>Aug 20, 2014</u> Date

For questions regarding this offer: (If different from above)

<u>Lloyd Bill Darnell II</u> Contact Name	<u>480-236-7286</u> Phone Number	<u></u> Fax Number
<u>info@nttsrepair.com</u> Email Address		

FEDERAL TAXPAYER ID NUMBER: [REDACTED]

Arizona Sales Tax No. [REDACTED] Tax Rate

Offeror certifies it is a: Proprietorship Partnership Corporation

Minority or woman owned business: Yes No

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5.0

PRICE SHEET

All prices quoted shall be firm and fixed for the specified contract period. All pricing shall include all freight, insurance, warranty and any other associated direct or indirect costs, except taxes.			
Item No.	Description	Unit of Measure	Unit Price
5.1	Standard maintenance services performed during normal business hours (Monday through Friday, 5:00 AM to 4:00 PM) as per Specifications	Per Hour	\$ <u>75.00</u> /Hour
5.2	Overtime Services (includes weekends and holidays) performed after normal business as per Specifications.	Per Hour	\$ <u>75.00</u> /Hour
5.3	Travel charges for technician on-site trips (Flat fee per call)	Per Call	\$ <u>0.00</u> /Call

Other Maintenance-Related Charges		
Description	Unit of Measure	Unit Price
Towing/hauling charge to and from Contractor's location (Round Trip flat fee)	Round Trip	\$ <u>365.00</u> /Trip
Percentage markup on parts (Markup based on Manufacturer's List Price)	Percent	<u>5</u> %

5.5 **TAX AMOUNT** Contractor should not include any use tax or federal tax in their bid price. The City is exempt from the payment of federal excise tax and will add use tax as applicable. For the purpose of determining the lowest cost, the City will not take tax into consideration.

Tax %: _____

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5.6 **DELIVERY** All services shall be performed in accordance with the Specifications.

5.7 **PROCUREMENT CARD ORDERING CAPABILITY** Please check the appropriate box.

Yes, I will accept payment under this contract with the Procurement Card.

No, I will not accept payment under this contract with the Procurement Card.

Company Name Truck Repair Phx, LLC

EXHIBIT B

COMPENSATION

METHOD AND AMOUNT OF COMPENSATION

Compensation shall be Hourly Rate plus reimbursable expenses for Consultant and all Sub-consultants. Documentation including monthly status report must be included with each Payment Application.

NOT-TO-EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$50,000 per fiscal year, or a maximum of \$250,000 if the City exercises all renewal options contemplated in Section 13 (Term) of this agreement

DETAILED PROJECT COMPENSATION

Preventative maintenance services and repairs on City of Glendale heavy equipment located at the city landfill.

11480 W Glendale Avenue, Glendale, AZ 85307

EXHIBIT C

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.

2.4 **Award.** At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 **Final Decision.** The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 **Costs.** The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 **Third Party Claims.** City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 **Liens.** City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 **Governmental Actions.** This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.