

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BTE BODY COMPANY, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 20____, between the City of Glendale, an Arizona municipal corporation (the "City"), and BTE Body Company, Inc., a Texas corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On October 1, 2019, under a S.A.V.E Cooperative Purchasing Agreement, the City of Phoenix (with BTE Body Company, Inc.) entered into a contract with Contractor to purchase the goods and services described in the OEM Scorpion Parts and Service Contract, Contract No. 151182-0 Agreement No. 20-FSD-026 ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was October 1, 2019, until the date the contract expires on September 30, 2022 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond September 30, 2024. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until

September 30, 2022. The City may renew the term of this Agreement for three (3) one-year periods until the Cooperative Purchasing Agreement expires on September 30, 2024. Glendale renewals are not automatic and shall only occur if the Cooperative Agreement is extended and the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.

- A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
- B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.

3. Compensation.

- A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
- B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed two hundred twenty-five thousand dollars (\$225,000) for the entire term of the Agreement (initial term plus any renewals).

4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.

5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.

6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.

7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.

8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.
10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
 c/o Craig Croner, Fleet Management Superintendent
 6210 W. Myrtle Avenue, #111
 Glendale, AZ 85301

And

BTE Body Company, Inc.
 c/o Patricia Ballentine
 2650 N. 32nd Avenue
 Phoenix, AZ 85009

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

City of Glendale, an Arizona
 municipal corporation

By: _____
 Kevin R. Phelps
 City Manager

ATTEST:

 Julie K. Bower (SEAL)
 City Clerk

APPROVED AS TO FORM:

 Michael D. Bailey
 City Attorney

“Contractor”

BTE Body Company, Inc.,
 a Texas corporation


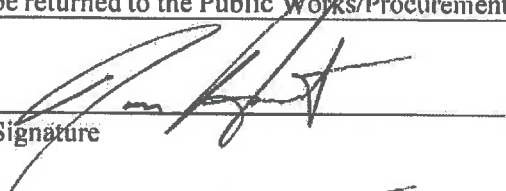



By: 
 Name: Clayton Campbell
 Title: Corporate General Manager

Jason Hurst
General Manager
BTE Phoenix, AZ


**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BTE BODY COMPANY, INC.**

EXHIBIT A

(CITY OF PHOENIX - CONTRACT NO. 151182-0 AGREEMENT NO. 20-FSD-026
OEM SCORPION PARTS AND SERVICE)

	CONTRACT AMENDMENT (OPTIONAL RENEWAL)		CITY OF PHOENIX Purchasing Division 200 W Washington St. 7 th Floor Phoenix, Arizona 85003
	Effective Date: 8/4/2021 Solicitation No.: RFA 20-026 SRM/SAP Contract No.: 4701007023 City Clerk Contract No.: 151182 Amendment No.: 3		
Contract Title: OEM SCORPION PARTS AND SERVICE		Buyer Name: Miranda Ortega	
Contractor Name OR Contact: BTE BODY COMPANY INC		Telephone No.: 602-534-9614	
Contractor E-mail: patricia.ballentine@btebody.com		Buyer E-mail: miranda.ortega@phoenix.gov	
THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:			
In accordance with the Aggrement, 1 Term of the Aggrement, the contract is extended for an additional option year, until September 30, 2022.			
ALL OTHER CONTRACT PRICES, TERMS, AND CONDITIONS WILL REMAIN THE SAME			
Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Public Works/Procurement.		City of Phoenix, a municipal corporation Ed Zuercher, City Manager	
Signature: 		By:  <small>Joseph Giudice (Sep 4, 2021 14:33 PDT)</small>	
Printed Name: JASON HURST		Joe Giudice Public Works Director	
Title: GRANDPATE MANAGER		ATTEST:	
Date: 8/13/2021			
		 City Clerk	
		Sep 7, 2021	

Approved as to form this 9th day of January 2018. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

	CONTRACT AMENDMENT	CITY OF PHOENIX Purchasing Division 200 W. Washington St., 7th Floor Phoenix, Arizona 85003 Phone: (602) 256-5634
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Effective Date	10/01/2020
Solicitation No.	RFA 20-FSD-026
SRM/SAP Contract No.	4701007023
City Clerk Contract No.	151182
Ordinance # and Date	S-46009, 09/18/2019
Amendment No.	2

Contract Title	OEM Scorpion Parts and Service
Contractor	BTE Body Company, Inc
Contractor E-mail	Patricia.Ballentine@btebody.com

Buyer Name	Amanda Cook
Telephone No.	(602) 256-5634
Buyer Email	Amanda.Cook@phoenix.gov

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

1. Exhibit A of the Agreement, "Scope of Work", is replaced by the Amended Exhibit A "Scope of Work", which is attached and incorporated into this Amendment No. 2.
2. In accordance with the Agreement, 1. Term of the Agreement, the contract is extended for an additional option year, until September 30, 2021.
3. Except as otherwise amended, all other terms and conditions of the Agreement and any prior amendments not in conflict will remain in full force and effect. If there is a conflict or ambiguity among amendments and the Agreement, the most recent amendment will only prevail and control if clear and unambiguous; and if not the original Agreement will govern to the extent necessary to support the intent of the Agreement.

**ALL OTHER CONTRACT PRICES, TERMS,
AND CONDITIONS WILL REMAIN THE SAME**




CONTRACT AMENDMENT

CITY OF PHOENIX
Purchasing Division
200 W. Washington St., 9th Floor
Phoenix, Arizona 85003
Phone: (602) 261-8812

BTE Body Company, Inc.

Contractor acknowledges receipt of an agreement with the amendment. A signed copy must be returned to the Public Works Department, Procurement Services.


Signature

JASON HURST
Printed Name

GENERAL MANAGER
Title

Date: 12-2-2020

City of Phoenix, a municipal corporation
Ed Zuercher, City Manager

By: Ginger Spencer Digitally signed by Ginger Spencer
Date: 2020.12.17 08:18:37 -0700'

Ginger Spencer
Director, Public Works Department

ATTEST:


City Clerk Dec 31, 2020

APPROVED AS TO FORM:
Cris Meyer, City Attorney

By: 
Patricia Boland (Dec 31, 2020 12:49 MST)
Patricia Boland
Assistant Chief Counsel



AMENDED EXHIBIT A – SCOPE OF WORK

1. INTRODUCTION

The City of Phoenix, Public Works Department, Fleet Services Division (FSD) is responsible for maintaining a fleet of over 7,500 different vehicles including light, medium, and heavy duty; including refuse collections trucks to various fire apparatus. FSD's mission is to provide our customers with fleet equipment that is safe, efficient, reliable, sustainable, and supports their mission in serving the City of Phoenix residents.

The Contractor shall provide Original Equipment Manufacturer (OEM) parts and accessories as required for the City's Scorpion refuse truck fleet. These parts and accessories shall be supplied on an "as needed" / "if needed" basis, according to the requirements contained herein. Contractors shall provide all parts and accessories offered by the manufacturers which they represent.

2. CONTRACTOR REQUIREMENTS

I. Inventory and Delivery Requirements

a. The Contractor shall establish and maintain sufficient local product inventory to support the City's Scorpion fleet. The Contractor shall guarantee that stock of products specified in this agreement is available locally and shall provide parts delivery and will call services, excluding weekends.

b. Special handling and/or freight charges must be pre-approved. The Contractor will assume all shipping/delivery charges unless prior authorization from the City is provided. If such authorization is received, the City will reimburse the Contractor as a pass through cost on the invoice with documentation that includes the price the Contractor paid for the special handling or freight.

c. The Contractor must meet the following fill rates:

- i. The Contractor will make available or deliver a minimum of 85% of all orders within 24 hours after receipt of order, excluding weekends. Orders placed on Friday must be delivered by the following Monday to meet this fill rate requirement.
- ii. The Contractor will make available or deliver all orders within one week after the receipt of order.
- iii. For orders requiring more time than allowed, as outlined above, the Contractor will notify the City authorized representative by email. This notification must include the reason for the delay, backorder information and estimated date/time of delivery. The Contractor will provide status updates on the order until delivered.
- iv. In the event that an item cannot be supplied immediately from Contractor's stock, the City reserves the right to purchase the item from other sources when the City determines that it is an emergency purchase need.
- v. Contractor must off-load all deliveries and pick up parts cores weekly at no additional cost to City.
- vi. The Contractor may make multiple daily deliveries to multiple locations Monday through Friday, as required, to fulfill orders. Delivery schedules to be determined by ordering location.
- vii. Deliveries will be made to various City locations. Below is a list of possible delivery locations with addresses:

AMENDED EXHIBIT A – SCOPE OF WORK

Location	Address
1. 22nd Avenue Service Center	2441 South 22nd Avenue, Phoenix, AZ 85009
2. Okemah Service Center,	3828 East Anne Street, Phoenix, AZ 85040
3. Glenrosa Service Center	4021 West Glenrosa, Phoenix, AZ 85019
4. Union Hills Service Center	138 East Union Hills, Phoenix, AZ 85024
6. Salt River Service Center	3045 South 22nd Avenue, Phoenix, AZ 85009
7. 27th Avenue Transfer Station	3060 South 27th Avenue, Phoenix, AZ 85009
8. North Gateway Transfer Station	3025 North Black Canyon Highway, Phoenix AZ 85085

3. WARRANTY REQUIREMENTS

- I. Contractor will guarantee all products supplied under this contract for a minimum of 12 months against defects in material and workmanship.
- II. Freight charges, restocking fees from manufacturer, process and handling to include parts and labor will be borne by the Contractor.
- III. Contractor shall issue a credit memo to the City of Phoenix Auto Stores for failed products. Replacement parts will not be accepted under this contract.
- IV. Parts will be OEM approved only and will maintain all factory warranty qualifications. If parts are used in conjunction with a warranty repair, they will be supplied at no cost to the City.
- V. All merchandise involved in warranty claims will be picked up from City locations by the Contractor on a weekly basis. Warranty claims must be processed within three (3) weeks of pick up. All Contractor disputed warranty claims will be brought to the attention of the Fleet Services Division's Warranty Department within that same three (3) week period in writing. If the claim is not disputed in the allotted time period, the claim shall be deemed approved and payable to the City.

4. CONTRACTOR QUALIFICATIONS

- I. Contractor shall utilize properly qualified employees in the performance of this contract. A qualified employee is defined as one who is trained and capable of properly, safely, and promptly providing services requested in association with this contract. Unqualified employees are not permitted to provide assistance of any kind under this contract.
- II. A high level of customer service and professionalism is a priority for the City. Contractor and Contractor employees shall provide services in a professional, business-like and efficient manner providing the highest level of assistance, service and courtesy to patrons of the facility. Complaints must be responded to quickly and the City's representative must be informed of all customer issues and resolutions immediately. All communications shall be through the City representative.

AMENDED EXHIBIT A – SCOPE OF WORK

- III. If the City determines, for any reason, that the qualifications, actions or conduct of any Contractor employee has violated this agreement or is otherwise detrimental to the City, a written notice will be issued to the Contractor. Upon receipt of such notice the Contractor shall promptly provide a qualified replacement person(s) to provide services under this contract. Examples of such conduct include: performing unsatisfactory services; poor customer service; interfering with operation of City fleet; or inappropriate behavior towards occupants, other contractors or subcontractors.

5. CONTRACTOR SERVICES

- I. Upon request, the Contractor shall provide an accurate and complete report detailing all orders placed under this contract. This report shall include:
 - The date the order was placed.
 - Description of the part and accessory (Manufacturer's Part Number, Catalog Date, List Price, Discount Price).
 - Carrier shipping information.
 - The date the order is complete.
 - City reference order number.
- II. Services provided under this contract shall be performed in conformance with all provisions of this agreement; legal statutes; code requirements; applicable OEM specifications; and Fleet Services Policies.
- III. The City reserves the right to exchange or receive vendor credit, on an equal dollar basis, all unused parts, in their original packaging, and of the same manufacturer and brand stocked by the contract vendor. The Contractor will credit returned parts at the current City cost (at time of exchange) less a maximum 10% restocking charge. Credits will not be required for parts that have become obsolete more than 12 months after the original date of acceptance of that part by the City. Parts to be exchanged will be those parts, which have become obsolete to the City. The City will be the sole judge of obsolescence.
- IV. The City will not supply invoices for returns on stock clean ups. Stock clean ups are done on as needed basis, but no more frequently than twice a year per year delivery location.

6. SPECIFIC PARTS DESCRIPTION

- I. Unless otherwise indicated, no substitutions or alternate product lines are permitted for parts offered under this contract.

7. INSPECTION AND ACCEPTANCE

- I. The City reserves the right to accept or reject parts delivered in damaged packaging or unsatisfactory condition within a 24-hour period.
- II. Items reserved for stock and are not immediately installed may be returned to Contractor if City finds part damaged or non-functioning within six months from the date the part was accepted by the City.

8. PROMOTIONAL PRICING

AMENDED EXHIBIT A – SCOPE OF WORK

- I. The Contractor may offer sales promotions to the City at the Contractor's discretion, for specific products or groups of products within the scope of this Contract. Sales promotions can include additional rebates, specials, product discounts offered by manufacturers, etc.

9. SAFETY, PRECAUTIONS AND CLEANLINESS


- II. Contractor(s) shall follow all delivery procedures set forth by City policies. Including staying in designated areas deemed safe for delivery drop off (i.e. following speed limits on City property, use of proper safety protection, time restrictions of accepting deliveries, etc.)
- III. Contractor(s) shall perform these services in a safe manner for means, methods, techniques, procedures, and safety precautions in connection with performance of these services.
- IV. Contractor(s) shall be responsible for its employees and the execution of all required safety, precautions and cleanliness during services under this contract.

10. PRICING

- I. The City may provide a spreadsheet of specific parts currently used. The Contractor will complete the spreadsheet in its entirety and will reflect the contracted rate and discounts set forth by the Contractor. This shall be mandatory for Contractor to do business with the City.

11. INVOICE / CREDIT MEMO REQUIREMENTS

- I. Contractor will not deliver parts without obtaining the proper purchase order number.
- II. The city will not pay for unauthorized modifications or additions.
- III. Credit Memo requirements:
 - Credit memos shall be created as a one-to-one basis. Credits given on items shall be from the same original invoice and purchase order number
 - Credit memos are to have the following information to be processed in a timely manner:
 - Original invoice number item was ordered on
 - Original purchase order number from original invoice
 - Credit memos must be clearly marked as to type of credit
 - Warranty
 - Core
 - General returns (not for warranty or cores)

	CONTRACT AMENDMENT	CITY OF PHOENIX Public Works / Procurement 200 W. Washington Street 7 th Floor Phoenix, Arizona 85003
	Date: 10/21/2019 Solicitation No.: RFA 20-FSD-026 SRM/SAP Contract No.: 4701007023 City Clerk Contract No.: 151182 Amendment No.: 1	

Contract Title: OEM Scorpion Parts and Service	Buyer Name: Amanda Cook
Contractor Name: BTE Body Company, Inc.	Telephone No.: 602-256-5634
Contractor email: patricia.ballentine@btebody.com	Buyer email: amanda.cook@phoenix.gov

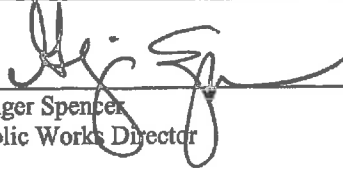
THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

Effective November 1, 2019 the following rates will apply:

Line Item No.	Description	Unit of Measure (UOM)	Unit Price (\$)
1	Shop Hourly Labor Rate	Hr	\$100
2	Shop Hourly Labor Rate-Emergency/After Normal Business Hours	Hr	\$156
3	On-Site Hourly Rate	Hr	\$100, with applicable trip charges.
4	On-Site Hourly Labor Rate-Emergency/After Normal Business Hours	Hr	\$156, with applicable trip charges.
5	Percentage (%) Mark up for Replacement Parts <i>*Supporting documentation must be submitted with every invoice for parts pricing.</i>	n/a	10% discount on parts when BTE is doing the service work. 2% discount for all other purchases.
6	Trip Charge	EA	\$150 per trip. (BTE Retains the right to waive the trip charge at our discretion).

ALL OTHER CONTRACT PRICES, TERMS, AND CONDITIONS WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of amendment. A signed copy must be returned to the Public Works/Procurement Division.



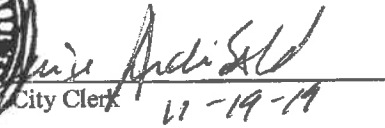
Ginger Spencer
Public Works Director


Signature

Clayton Campbell
Printed Name

Corporate General Manager
Title

ATTEST:


City Clerk *11-19-19*

Date: 10/22/2019

Approved as to form this 9th day of January 2018. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BTE BODY COMPANY, INC.**

EXHIBIT B
Scope of Work

PROJECT

To provide maintenance and repair services to heavy duty trucks and equipment on an as-needed basis.

Services Agreement

151182-0

AGREEMENT NO. 20-FSD-026

Amanda Cook

Public Works Department

200 W. Washington St, 7th Floor

Phoenix, AZ 85003

602-256-5634

Amanda.Cook@phoenix.gov

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SERVICES AGREEMENT

BETWEEN

THE CITY OF PHOENIX

BTE Body Company, Inc.

This **AGREEMENT** is made and entered into this 1st of October, 2019, ("the Effective Date"), or as of the City Clerk date, whichever is later, by and between the City of Phoenix, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as "City") and BTE Body Company, Inc. (hereinafter referred to as "Contractor").

RECITALS

1. The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for services.
2. The City desires to obtain the services that are specifically set forth in this Agreement.
3. The City procured these services in accordance with the Phoenix City Code and Administrative Regulation 3.10.
4. Contractor possesses the skills and expertise necessary to provide such services as desired by the City.
5. This Agreement is authorized by the City Council S-46009, agenda number 59, on September, 18 2019.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. TERM OF AGREEMENT:

- 1.1. This Agreement begins on the Effective Date in the above introductory paragraph, and upon approval by the City, for an initial one-year period and four option years.
- 1.2. This Agreement will terminate upon the earliest occurrence of any of the following:
 - 1.2.1. reaching the end of the term exercised as set forth in 1.1;
 - 1.2.2. completing the services set forth in the Scope of Work attached as *EXHIBIT A – SCOPE OF WORK* (the "Services");
 - 1.2.3. payment of the maximum compensation under Paragraph 2 of this Agreement; or
 - 1.2.4. termination pursuant to the provisions of this Agreement.

2. PAYMENT:

2.1 Contractor will submit invoices upon completion of work. Each invoice will be accompanied with itemized receipts. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation will be provided that supports the charges reflected in the monthly invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to the Contractor. Contractor will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.

2.2 Invoices will be submitted to: invoices@phoenix.gov

3. METHOD OF ORDERING (PURCHASE ORDERS):

Contractor will deliver items and/or services only upon receipt of a written purchase order or shopping cart issued by the department. All contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number or shopping cart number.

4. SCOPE OF WORK AND SPECIAL TERMS AND CONDITIONS:

Contractor will provide services that will be in accordance with the Scope of Work as set forth in *EXHIBIT A – SCOPE OF WORK*, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these services, Contractor will also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in *EXHIBIT D*.

5. EXHIBIT C - INDEMNIFICATION & INSURANCE REQUIREMENTS - SEE EXHIBIT C

6. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER.

6.1 The parties agree that Contractor is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractors. Neither Contractor nor any of Contractor's agents, employees or helpers will be deemed to be the employee, agent, or servant of the City. The City is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Contractor.

6.2 This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Contractor will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules will accrue to such individual. Contractor will have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant

thereto concerning such individuals and will save and hold harmless the City with respect thereto.

7. LEGAL WORKER REQUIREMENTS:

7.1 The City is prohibited by Arizona Revised Statutes § 41-4401 from awarding an agreement to any Contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214(A). Therefore, Contractor agrees that:

- Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.
- A breach of warranty herein will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty herein.

8. CONFIDENTIALITY AND DATA SECURITY:

8.1. 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 will not disclose data generated in the performance of the Services to any third person without the prior written consent of the City Manager, or his/her designee.

8.2. 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.

8.3. In the event that data collected or obtained by the Contractor in connection with this Agreement is believed to have been compromised, Contractor will notify the City Privacy Officer 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.

8.4. Contractor agrees that the requirements of this Section will be incorporated into all subcontractor/subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this Section will be deemed to cause irreparable

harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

- 8.5. The obligations of Contractor under this Section will survive the termination of this Agreement.

9. CONTACTS WITH THIRD PARTIES:

9.1 Contractor or its subcontractors will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Contractor or its subcontractors will promptly inform the City giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section will survive the termination of this Agreement.

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

10. SBE/ DBE UTILIZATION:

The City extends to each individual, firm, vendor, supplier, contractor and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

11. AUDIT/RECORDS:

11.1. The City reserves the right, at reasonable times, to audit Contractor's books and records relative to the performance of service under this Agreement. All records pertaining to this Agreement will be kept on a generally accepted accounting basis for a period of five years following termination of the Agreement.

11.2. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

12. COMPLIANCE WITH LAWS:

Contractor will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted pursuant to this Agreement

13. AMENDMENTS:

Whenever an addition, deletion or alteration to the Services described in *EXHIBIT A – SCOPE OF WORK* substantially changes the Scope of Work thereby materially

increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the City and Contractor before such addition, deletion or alteration will be performed. Changes to the Services may be made and the compensation to be paid to Contractor may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by Contractor will be allowed except as provided herein, nor will Contractor do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Contractor without prior written authorization will be at Contractor's risk, cost and expense, and Contractor agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

14. NO ORAL ALTERATIONS:

No alteration or variation of the terms of this Agreement will be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement will be binding on any of the parties herein.

15. NOTICES:

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

If to Contractor:
BTE Body Company, Inc.
Attn: Clayton Campbell, Corporate General Manager
425 S. Loop 12
Irving TX, 75060

If to City:
City of Phoenix
Attn: Amanda Cook
200 W. Washington St, 7th Floor
Phoenix, AZ 85003

- 15.2.** Notice will be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent by facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.
- 15.3.** Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

16. INTEGRATION:

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

17. GOVERNING LAW; FORUM; VENUE:

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) will govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, will be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

18. FISCAL YEAR CLAUSE:

The City's fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of 60 days immediately following the close of the fiscal year, under the provisions of Arizona Revised Statutes §42-17108. Therefore, Contractor must submit billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

19. TERMINATION OR SUSPENSION OF SERVICES:

19.1 City's Right to Terminate:

The City reserves the right to terminate this Agreement without cause, or to abandon the Services, or any part of the Services not then completed, by notifying Contractor in writing. Immediately upon receiving a written notice to terminate or suspend Services, Contractor will:

- Discontinue advancing the work in progress, or such part that is described in the notice.
- Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
- Appraise the work it has completed and submit its appraisal to the City for evaluation.
- Be paid in full the pro rata value for services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including

demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.

20. FINAL PAYMENT:

20.1 PAYMENT: The City will make final payment for all Services performed and accepted within 60 days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Contractor will be at the City's sole risk for such use.

20.2 TEMPORARY SUSPENSION: The City may, by written notice, direct Contractor to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Contractor in performance, and not due to fault or negligence of Contractor, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Contractor for a price adjustment must be supported by appropriate documentation asserted promptly after Contractor has been notified to suspend performance.

21. PROFESSIONAL COMPETENCY:

21.1 QUALIFICATIONS: Contractor represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.

21.2 LEVEL OF CARE AND SKILL: Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Contractor's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

22. SPECIFIC PERFORMANCE:

Contractor agrees that in the event of a breach by Contractor of any material provision of this Agreement, the City will, upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this Agreement. In the event the City will elect to treat any such breach on the part of Contractor as a discharge of the Agreement, the City may nevertheless maintain an action to recover damages arising out of such breach. This paragraph is not intended as a limitation of such other remedies as may be available to the City under law or equity.

23. FORCE MAJEURE:

Contractor will not be responsible or liable for, or deemed in breach hereof because of any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including but not limited to fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Contractor in connection with the Services and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter referred to as "Force Majeure").

24. DOCUMENTATION:

24.1 DISSEMINATION AND RETENTION: There will be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Contractor will relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Contractor pending the resolution of the existing or anticipated litigation.

24.2 FORMAT AND QUALITY: All documents prepared by Contractor will be prepared in a format and at a quality approved by the City.

24.3 DOCUMENT REVIEW: Contractor will review all documents provided by the City related to the performance of the Services and will promptly notify the City of any defects or deficiencies discovered in such review.

24.4 SUBMITTALS: Contractor will provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as such become available to the City for review.

25. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:

Contractor will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which Services are performed will not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

26. CONFLICTS OF INTEREST:

26.1 Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee

of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

26.2 The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

26.3 Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

26.4 This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

27. PUBLIC RECORDS:

27.1 Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Contractor acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Contractor understands that disclosure of some or all of the items subject to this Agreement may be required by law.

27.2 In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, the City agrees to provide the Contractor with notice of that request, which shall be deemed given when deposited by the City with the USPS for regular delivery to the address of the Contractor specified in their proposal. Within ten days of City notice by the City, the Contractor will inform the City in writing of any objection by the Contractor to the disclosure of the requested information. Failure by the Contractor to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.

27.3 In the event the Contractor objects to disclosure within the time specified, the Contractor agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Contractor does not object thereto. Furthermore, the Contractor agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

28. CLAIMS OR DEMANDS AGAINST THE CITY:

28.1 Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

28.2 Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

29. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:

Contractor waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

30. CONTINUATION DURING DISPUTES:

30.1 Contractor agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement each party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

30.2 Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement will not be deemed a waiver.

31. THIRD PARTY BENEFICIARY CLAUSE:

The parties expressly agree that this Agreement is not intended by any of its provisions to create any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

32. LAWFUL PRESENCE REQUIREMENT:

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

33. NO ISRAEL BOYCOTT:

By entering into this contract, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.

34. EQUAL EMPLOYMENT OPPORTUNITY AND PAY:

34.1 In order to do business with the city, contractor must comply with phoenix city code, 1969, chapter 18, article v, as amended, equal employment opportunity requirements. Contractor will direct any questions in regard to these requirements to the equal opportunity department, (602) 262-6790.

34.2 For a contractor with 35 employees or fewer; contractor in performing under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor further agrees that this clause will be incorporated in all subcontracts related to this agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, contractor agreements or subleases of this agreement entered into by supplier/lessee.

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

employment without regard to their sexual orientation or gender identity or expression.

34.4 Documentation: suppliers and lessees may be required to provide additional documentation to the equal opportunity department affirming that a nondiscriminatory policy is being utilized.

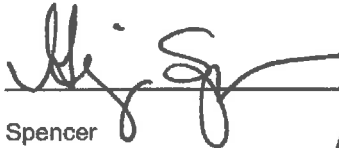
34.5 Monitoring: the equal opportunity department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The equal opportunity department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

APPROVALS

IN WITNESS WHEREOF, the parties herein have caused this Agreement to be executed, effective as of the date in the first paragraph (the "Effective Date");


CITY OF PHOENIX, a municipal corporation

ED ZUERCHER, City Manager

By: 

Ginger Spencer
Director, Public Works Department



ATTEST: 

City Clerk

11-1-19

APPROVED AS TO FORM:




Acting City Attorney

MKEC

BTE Body Company, Inc.

a State corporation

By: 
Name Clayton A. Campbell

Corporate General Manager, BTE Body Company

2019 OCT 31 PM 3:21

**1. EXHIBIT A – SCOPE OF WORK
INTRODUCTION**

- 1.1. The City of Phoenix, Public Works Department, Fleet Service Division(FSD) is responsible for maintaining a fleet of approximately 6,500 vehicles including light duty, medium duty, heavy duty and off-road equipment. FSD's mission is to provide our customers with fleet equipment that is safe, efficient, reliable, sustainable and supports their mission in serving the City of Phoenix residents. The City's automated side loading refuse fleet consist of approximately 83 Scorpion automatic side loader refuse trucks. BTE Body Company Inc is the authorized Original Equipment Manufacturer (OEM) service provider for Scorpion Bodies.
- 1.2. The Contractor shall provide OEM parts, maintenance and repairs to heavy-duty Scorpion refuse trucks on an "as needed" basis for an initial one-year period, with four option years, commencing on or about Council approval, in accordance with the specifications and provisions contained herein.
- 1.3. The Contractor will perform all work in accordance with the current standards set forth by the original equipment manufacturer (OEM) for electrical, welding and repair of refuse truck packer bodies.

2. CONTRACTOR REQUIREMENTS

- 2.1 The Contractor will provide all labor, replacement parts (hard and soft), welding, tools, equipment and any other material necessary to perform Scorpion refuse body repairs, in accordance with all the terms, provisions, and requirements of this contract, as well as meeting all OEM mandatory standards:
- 2.2 **Service Requirements:**
The Solid Waste Refuse Fleet is critical equipment to the daily operations of Solid Waste collections services provided to the City's residents. It is crucial to have these units in operational status with an availability rate of 85% or higher to meet the daily collection operations. It's also imperative that the Contractor is able to maintain both warranty and customer paid service request in a timely manner to maintain the required availability rate of the equipment.
- 2.3 All service performed by the Contractor under this will be consistent with industry best practices and will meet all applicable federal, state and local standards regarding this type of equipment or operation of equipment. Contractor must also meet all applicable OSHA regulations to ensure the safety of staff, city employees and city residents. The contractor will maintain a high standard of cleanliness while servicing City equipment.
- 2.4 All service performed by the Contract will meet the Original Manufacturer Equipment (OEM) specifications.
- 2.5 It is the expectation of the City, as described herein, that the Contractor will provide timely maintenance and repair service to correct deficiencies and return the equipment to an in-service status as soon as possible.
- 2.6 The Contractor must have the knowledge and expertise necessary to completed the full scope and depth of maintenance and repairs to the specific body type.

- 2.7 The contractor will not subcontract any portion of the work under this contract, without prior approval by the authorized City Fleet Services Supervisor.
- 2.8 In the event that the Contractor desires to utilize a subcontractor for some part of the work and seeks approval, the contractor will furnish the names, qualifications and experience of the proposed subcontractor.
- 2.9 The Contractor will, however, remain fully liable and responsible for the work done by the subcontractor on behalf of the Contractor and will assume compliance with all the requirements of this contract.
- 2.10 The Contractor will respond verbally or via electronic communication to all service call requests within two (2) business hours. Business hours are defined as Monday through Friday from 6am to 5pm.
- 2.11 Any request for service outside of the defined business hours must be addressed as defined above on the next business day.
- 2.12 The Contractor will provide pickup and delivery service within four (4) business hours after accepting the request for service noted above.
- 2.13 The Contractor will evaluate (diagnose) the request for services and provide a written estimate of all necessary job/complaint to return the equipment to an in-service status. The Contractor shall not begin any job/complaint without prior written approval with the exception of diagnosis time to confirm the cause of failure.
- 2.14 The Contractor will need to provide an estimated hours of diagnosis time necessary to City staff for approval before any diagnosis shall commence.
- 2.15 This Contract will allow the Contractor to perform one (1) hour of diagnosis time without authorization to prepare written estimate. The one (1) hour of diagnosis time is to cover all of the requested job/complaint in the estimate being prepared.
- 2.16 The Contractor will provide an itemized listing of estimated cost for each repair activities. The itemized listing will include the labor hours, labor cost, part number, part description, part cost, part quantity per each repair activities along with a description of services to be performed including industry standards of Complaint, Cause and Correction. The Contractor's written estimate will be submitted to the corresponding location via electronic communication. A purchase order will be issued upon agreement of estimated work activities and estimate cost to the City.
- 2.17 The Contractor should not commence in performing any work activities until a purchase order has been received electronically from the corresponding location authorized staff.
- 2.18 In the event that additional supplemental work activities are found outside the original estimate, the Contract will provide a written estimate of the supplemental repairs to the corresponding location via electronic communication for approval. The Contractor should not commence in performing any supplemental work activities until a purchase order has been received electronically from the corresponding location authorized staff.

- 2.19 The Contractor will complete the repair or rebuild of refuse bodies locally. If the repair requires a new part, the replacement part must be available locally or delivered within forty-eight (48) hours at no additional cost to the City.
- 2.20 Upon completion of all job/complaint and the equipment has been returned to In-service status, the contractor must perform a quality assurance inspection before returning equipment to City for service.
- 2.21 The City anticipates that the majority of services performed under this contract will take place during normal business hours. On occasion, the City may require the Contractor to provide services as part of an after-hour call out or emergency call. After-hour call outs are those requests for services during non-City Business Hours. Non-City Business Hours are Monday through Friday 5:00p.m. to 6:00 a.m., weekends, or a City Holiday. Emergency calls are those where work is performed during after hours, but require an immediate response within 30 minutes of the initial request for service.
- 2.22 The Contractor will perform all repairs at their established facility unless deemed as on-site or mobile service. The facility must be outfitted to conduct the necessary work in an efficient and cost effective manner to the City. Any work that is performed by a Sub-contract must also meet this requirement.
- 2.23 The City can also request on-site or mobile repairs from equipped Contractors. The Contractor will need to have the necessary equipment to conduct on-site or mobile work in an efficient and cost effective manner to the City. Any on-site or mobile repairs performed on be-half of the Contract by a Subcontract must also meet these requirements.
- 2.24 Any Contractor or Subcontractor employee(s) established to performed on-site or mobile repairs at a City facility must perform the badging and background requirements in the Special Terms and Conditions of this contract. Any Contractor or Subcontractor employee(s) without proper badging will not be allowed to perform the on-site or mobile repair services at a City facility. The Contractor will not be able to bill the City for any travel charges, windshield time or labor associated to a non-badged employee(s) refused access to a City facility.
- 2.25 Locations that could request On-Site or Mobile repairs;

Glenrosa Service Center
4021 W. Glenrosa Ave
Phoenix, AZ 85019

Salt River Service Center
3045 S. 22nd Ave
Phoenix, AZ 85009

Union Hills Service Center
138 E. Union Hills Drive
Phoenix, AZ 85024

Okemah Service Center
3828 E. Anne St
Phoenix, AZ 85040

3. CONTRACTOR QUALIFICATIONS

- 3.1 Contractor(s) shall have been in the Refuse Body repair business for a minimum of five (5) consecutive years and be completely familiar with the specified requirements and methods needed for proper performance of this contract. For vehicle(s) with original OEM warranty coverage, the City reserves the right to utilize the appropriate warranty repair facility for any additional repairs.
- 3.2 Contractor(s) shall utilize properly qualified employees in the performance of this contract. A qualified employee is defined as one who is trained and capable of properly, safely, and promptly providing services requested in association with this contract. Employees must have a minimum of two years' experience providing refuse body repair and/or welding. Unqualified employees are not permitted to provide assistance of any kind under this contract.
- 3.3 If the City, determines, for any reason, that the qualifications, actions or conduct of any particular Contractor(s) employee have violated this agreement or are otherwise detrimental to the City, a written notice will be issued to the Contractor. Upon receipt of such notice that Contractor promptly provide a qualified replacement person(s) to provide services under this contract. Examples of such conduct include; performing unsatisfactory services, poor customer service, interfering with operation of City fleet; or inappropriate behavior towards City employees, customers, and other Contractor(s) or Subcontractor(s).

4. ESTIMATE / INVOICE REQUIREMENTS

- 4.1 Estimates / Invoices submitted to the City upon completion of all work activities should be clear and concise. Invoices must include the following information before processing for payment can begin. All final work order invoices must be provided within twenty-four (24) hours from final quality assurance inspection.
- 4.2 Estimate header must include Contractor name, address, phone number and email address. Invoice header must contain the previous information and contain the invoice number and invoice date.
- 4.3 Estimate / invoice header must include City unit number and current meter.
- 4.4 Estimate / invoice header must include City issued purchase order number.
- 4.5 Each job/complaint must include industry standards of Complaint, Cause and Correction.
- 4.6 Each job/complaint must also include labor hours and parts utilized, including part number, part description, part quantity and part cost.
- 4.7 Warranty job/complaint also include Complaint, Cause and Correction. The job/complaint must also include parts utilized, including part number, part description, part quantity at a zero cost to the City.
- 4.8 The City will not pay for unauthorized modifications or additions.

- 4.9 The City will not pay additional charges for fuel surcharges, environmental fees, waste fees, shop supplies, freight and/or shipping and handling and other miscellaneous charges will not be paid; these charges must be included in the solicitation submittal price. Invoices will be processed for the bid submitted prices only.
- 4.10 Contractor must invoice labor hours and discount for parts at the manufacturer rate applicable from the pricing tables in Exhibit B.

5. INSPECTION AND ACCEPTANCE

- 5.1 The City will inspect each job/complaint done under this Contract prior to acceptance and invoice processing for payment.
- 5.2 Inspection criteria will include, but not be limited to, mechanical integrity, quality, workmanship and materials.
- 5.3 The City will have two (2) business days (excluding any City holidays) for this process. If the repair is unacceptable, the Contractor will correct the deficiencies and return the equipment at no additional cost to the City. The City will be the sole determiner of acceptability.

6. SAFETY, PRECAUTIONS AND CLEANLINESS

- 6.1 Contractor(s) shall perform these services in a safe manner for means, methods, techniques, procedures, and safety precautions in connection with performance of these services.
- 6.2 Contractor(s) shall be responsible for its employees and the execution of all required safety, precautions and cleanliness during services under this contract.
- 6.3 All final testing of repairs shall be performed to original equipment manufacturers (OEM) and/or industry standards.
- 6.4 The Contractor is responsible to ensure that employees and approved Sub-Contracted employees have a valid Commercial Driver's License (CDL) when operating all heavy-duty equipment as per Federal law.
- 6.5 The Contractor is also responsible to validate the employees CDL before pick up/delivery of units to the City's shop locations.
- 6.6 The Contractor(s) will always follow all local, county, state, and national regulations including OSHA, requirements, state, local and manufacturer operating procedures and generally accepted procedures.
- 6.7 The Contractor is required to follow and exercise all safety requirements set forth for performing repairs on any Compressed Natural Gas (CNG) vehicles in a building, to include proper ventilation, fans and alarms. This requirement must also be executed during any body repairs on CNG equipped units as per the City's policies and procedures.

- 6.8 The Contractor will implement all final settings and adjustments in accordance with manufacturer's/owner's/engineer's specifications.

7. REPAIR, REPLACEMENT AND REBUILD PARTS

- 7.1 Contractor shall use original equipment manufacturers (OEM) parts for repairs or replacement parts for existing equipment unless otherwise approved by the authorized City representative. All parts or equipment furnished must be equal to or exceed that of the original equipment manufacturer in material, performance and warranty.
- 7.2 The City reserves the right to supply parts that are not readily available from an OEM or aftermarket source. In the event that a City supplied part is installed, the Contractor must provide installation warranty for ninety (90) days.
- 7.3 In the event that the City supplied part experiences a failure, the Contractor is no longer required to provide installation warranty.
- 7.4 The vendor must also return the failed component/core upon delivery of the unit back to the City. All labor and replacement parts shall be fully guaranteed against defects in material and workmanship by the Contractor for the length of the OEM warranty or twelve (12) month period from the date of acceptance by the City, whichever is greater.
- 7.5 Any major component that is recondition/refurbished shall be warrantied against defects in material and workmanship for a twenty-four (24) month period to include parts and labor.
- 7.6 All warranty work shall be completed within four (4) business days.
- 7.7 Any additional cost from wear or damaged components not covered by warranty will need to be authorized prior to replacement.
- 7.8 The City will not pay for any additional costs that were not authorized prior to beginning the work activities as outlined in the Service Requirements section of this contract.
- 7.9 The Contractor shall maintain a sufficient supply of products and/or parts to adequately support the vehicle repairs.
- 7.10 Following the expiration of any express or implied warranty applicable to those items, goods or equipment furnished to the City under this contract, the Contractor agrees to supply the City with in-stock product and parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were contracted to service or install those repair and replacement parts. The Contractor will guarantee that stock of product specified in this agreement is available locally. Contractor shall provide parts delivery, to include deliveries on Saturday.

8. PRICING

- 8.1 A written quote will be provided to the authorized City representative by the vendor showing estimated hours for repair, hourly labor rate, and itemized list of parts and pricing required to complete work.

- 8.2 Pricing shall be consistent with best industry practices, which ensures labor charges are billed only once in the event a task is overlapping.
- 8.3 All time increments of labor shall be quoted at the job/complaint deepest level and include all removal/install to gain access to components necessary to complete the job/complaint at hand.
- 8.4 Labor time increments will be billed in 10th's of an hour based upon book time or industry standard.
- 8.5 If special handling and/or freight are required, the Contractor will assume all charges unless prior authorization is granted by the City. The City will reimburse the Contractor as a pass through cost on the invoice with documentation showing the price the Contractor paid for the special handling or freight.
- 8.6 The Contractor may offer sales promotions to the City at the Contractor's discretion, for specific products or groups of products within the scope of this Contract. Sales promotions can include additional rebates, specials, product discounts offered by manufacturers, etc.

9. SPECIFICATIONS FOR REPAIRS

- 9.1 All welds shall meet industry standards in quality and appearance.
- 9.2 Any repair/welding that burns or damages the exterior paint surface of the body shall be cleaned, sanded, primed, and refinished to match the original color of the affected area.
- 9.3 All hydraulic system repairs, (cylinders, hoses, pumps, etc.) shall include replacement of any hydraulic o-rings exposed to the elements. All o-ring replacements will be of proper design and material types as specified by hose and fitting manufacturing or OEM specifications.
- 9.4 All parts necessary to perform jobs will be supplied by Contractor unless otherwise noted.
- 9.5 In any event of a major component failure, the Contractor will give the authorized City staff an opportunity to review the failed parts/components before disposal of failed parts.
- 9.6 Any major component failure that occurs due to lack of lubrication, the Contractor will need to provide pictures and a detailed explanation as the cause of failure. Upon completion of the repair, all failed components will be provided to the City for assessment of the cause of failure.

10. HISTORICAL DATA REQUEST

- 10.1 The Contractor will need to maintain historical work activities data by City issued unit number for the life of this contract, including any extensions.
- 10.2 Upon request, the Contractor shall provide an accurate and complete report detailing all services provided under this contract.

EXHIBIT B – FEE SCHEDULE

1. COSTS AND PAYMENTS:

1.1 PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City will default to 0% - net 45 days:

- Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**
- Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City's servicing bank ("Bank"). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

2. BID PRICE SCHEDULE:

Line Item No.	Description	Unit of Measure (UOM)	Unit Price (\$)
1	Shop Hourly Labor Rate	Per Hr	\$100
2	Shop Hourly Labor Rate-Emergency/After Normal Business Hours	Per Hr	\$156
3	On-Site Hourly Rate	Per Hr	\$100, with applicable trip charges.
4	On-Site Hourly Labor Rate-Emergency/After Normal Business Hours	Per Hr	\$156, with applicable trip charges.
5	Percentage (%) Mark up for Replacement Parts <i>*Supporting documentation must be submitted with every invoice for parts pricing.</i>	%	10% discount on parts when BTE is doing the service work.

3. EMERGENCY 24-HOUR SERVICE CONTACT

Name JASON HURST

Telephone Number 602-278-9227 EXT 102

Alternate Contact SHAWN HURST

Telephone Number 972-554-0725

EXHIBIT C - INDEMNIFICATION & INSURANCE REQUIREMENTS

1. INDEMNIFICATION CLAUSE:

Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees ("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) ("Claims") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any Claims arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from the work performed by Contractor for the City. The obligations of Contractor under this provision survive the termination or expiration of this Contract.

2. INSURANCE REQUIREMENTS:

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and sub consultants. Contractor and subcontractors must maintain that insurance until all of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements 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 stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

2.1. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor must provide coverage at least as broad and 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.

2.1.1. Garage Liability (General Liability) - Occurrence Form

Policy must include bodily injury, property damage and broad form contractual liability for garage operations, covered autos and operations necessary and incidental to the garage business.

General Aggregate

\$2,000,000

Premises and Operations	\$1,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Garage keepers Liability:	
Each Auto	\$100,000
Each Occurrence	\$1,000,000

Automobile Liability including bodily Injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract:

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include Garage Keepers Liability coverage.
- The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."
- The policy must be endorsed to include coverage for towing (if towing services are included in the scope of services in the Contract or part of the normal operations of the Contractor).

2.1.2. Worker’s Compensation and Employers’ Liability

Workers’ Compensation Statutory	
Employers’ Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

3. ADDITIONAL INSURANCE REQUIREMENTS: The policies must include, or be endorsed to include, the following provisions:

- On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is 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 must be primary insurance and non-contributory with respect to all other available sources.

4. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to (City of Phoenix Department Representative's Name & Address & Fax Number).

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

6. VERIFICATION OF COVERAGE: Contractor must 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 must be sent directly to (City Department Representative's Name and Address). The City project/contract number and project description must 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. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

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

8. APPROVAL: Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

EXHIBIT D - SUPPLEMENTAL TERMS AND CONDITIONS

1. FREE ON BOARD (FOB):

Prices quoted shall be FOB destination and delivered, as required, to the following point(s):

Glenrosa Service Center
4021 W. Glenrosa Ave
Phoenix, AZ 85019

Salt River Service Center
3045 S. 22nd Ave
Phoenix, AZ 85009

Union Hills Service Center
138 E. Union Hills Drive
Phoenix, AZ 85024

Okemah Service Center
3828 E. Anne St
Phoenix, AZ 85040

2. PRICE:

All prices submitted shall be firm and fixed for the initial one-year contract period. Thereafter, price adjustments will be considered annually provided the adjustments are submitted in writing with thirty days' advance notice. Requests shall be accompanied with written documentation from the manufacturer confirming the price increase. The City will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to the procurement officer at the address on the front page of the solicitation, referencing the solicitation #. Price increases agreed to by any staff other than Deputy Finance Director or Department Director are invalid. The contractor acknowledges and agrees that it will repay all monies paid as a result of a requested price increase unless the price increase was specifically approved in writing by the Deputy Finance Director or Department Director.

3. METHOD OF ORDERING (PURCHASE ORDERS):

Issuance of written purchase order(s) by the Procurement Division. Contractor shall deliver items and/or services only upon receipt of a written purchase order issued by the Procurement Division. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

4. METHOD OF INVOICING:

INVOICE MUST INCLUDE THE FOLLOWING:

- 4.1 City purchase order number, requisition number, or contract agreement number.
- 4.2 Items listed individually by the written description and part number.
- 4.3 Unit price, extended and totaled.
- 4.4 Quantity ordered, back ordered, and shipped.
- 4.5 Applicable tax.
- 4.6 Invoice number and date.

- 4.7 Requesting department name and "ship-to" address.
- 4.8 Payment terms.
- 4.9 FOB terms.

5. METHOD OF PAYMENT:

Contractor will be paid on a monthly basis in arrears. Invoices must contain the agreement number or Offer number under which the purchase was awarded. Contractor to submit monthly invoice to: invoices@phoenix.gov

6. METHOD OF PAYMENT:

Payment to be made from Contractor's invoice, and a copy of the signed delivery invoices submitted to cover items received and accepted during the billing period. Invoices must contain the agreement number or Offer number under which the contract is awarded.

7. PARTIAL PAYMENTS:

Partial payments are not authorized on individual written contract order release number issued. Payment will be made upon final delivery and acceptance of all supplies or services ordered on each contract order release number issued against the agreement.

8. STRICT PERFORMANCE:

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

9. AUTHORIZED CHANGES:

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

10. LICENSES AND PERMITS:

Contractor will 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.

11. ADVERTISING:

Contractor will not advertise or publish news releases concerning this contract without the prior written consent of the Deputy Finance Director, and the City will not unreasonably withhold permission.

12. 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 Phoenix and will not be used or released by the Contractor or any other person except with prior written permission by the City.

13. COOPERATIVE AGREEMENT:

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies of the State of Arizona.

A current listing of eligible entities may be found at [S.A.V.E. | Maricopa County, AZ](#) and then click on Contracts, "S.A.V.E." listing and "ICPA". Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other public entities who utilize this Agreement.

14. AWARD QUALIFICATION:

The Contractor hereby agrees that any of its employees who may be assigned to the City sites satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this Contract and shall perform no work at other City of Phoenix facilities. In the event that other services, in addition to or separate from the services specified herein, may be deemed necessary by the Deputy Finance Director or Department Director or his authorized representative, the Contractor may be requested to perform the additional or special service.

15. PERFORMANCE INTERFERENCE:

Contractor shall notify the City's department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract, and confirm it in writing within 24 hours.

Department Contact: Beth Casillas

Phone: 602-262-7396

16. CLEANING:

The Contractor shall keep the premises clean of all rubbish and debris generated by the work involved and shall leave the premises neat and clean. All surplus material, rubbish, and debris shall be disposed of by the Contractor at their expense. The work area shall be cleaned at the end of each work day.

All materials, tools, equipment, etc., shall be removed or safely stored. The City is not responsible for theft or damage to the Contractor's property. All possible safety hazards to workers or the public shall be corrected immediately and left in a safe condition at the end of each work day. If there is a question in this area, the City's project manager will be consulted.

18. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENT:

18.1. Contractor and Subcontractor Workers Background Screening: Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's

background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare.

18.1.1. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

18.2. Background Screening Risk Level: The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges. The current risk level and background screening required is **STANDARD RISK LEVEL**.

18.3. Standard Risk Level: A standard risk background screening will be performed when the Contract Worker's work assignment will:

18.3.1. require a badge or key for access to City facilities; or

18.3.2. allow any access to sensitive, confidential records, personal identifying information or restricted City information; or

18.3.3. allow unescorted access to City facilities during normal and non-business hours.

18.4. Requirements: The background screening for this standard risk level will include a background check for real identity/legal name, and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.

18.5. Contractor Certification; City Approval of Background Screening:

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

18.5.1.1 determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,

18.5.1.2 for reviewing the results of the background check every five years; and,

18.5.1.3 to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,

18.5.1.4 Submitting the list of qualified Contract Workers to the contracting department.

18.5.2 For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.

18.5.3 By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

Terms of This Section Applicable to all Contractor's Contracts and Subcontracts: Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

- 18.6 Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the Indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.
- 18.7 Continuing Duty; Audit:** Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.
- 18.8 Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach:** If Contractor is required to access any City facilities without an escort, City badging is required. Contractor's default under this section will include, but is not limited to, the following:
- 18.8.1** Contract Worker gains access to a City facility(s) without the proper badge or key;
 - 18.8.2** Contract Worker uses a badge or key of another to gain access to a City facility;
 - 18.8.3** Contract Worker commences services under this agreement without the proper badge, key or background screening;
 - 18.8.4** Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
 - 18.8.5** Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
 - 18.8.6** Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated

loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

18.9 Employee Identification and Access:

- 18.9.1** Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.
- 18.9.2** Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.
- 18.9.3** Unless otherwise provided for in the scope of work:
- 18.9.4** Contract Workers must **always** have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- 18.9.5** Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

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

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

18.12 Return of Badge or Key: All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

18.13 Badge and Key Fees: The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon a 30-day

prior written notice to Contractor.

Replacement Badge Fee:	\$55.00	per badge
Lost/Stolen Badge Fee:	\$55.00	per badge
Replacement Key Fee:	\$55.00	per key
Replacement Locks:	\$55.00	per lock

19. SECURITY INQUIRIES:

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

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

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

20. INSPECTION AND ACCEPTANCE:

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

21. PRODUCT DISCONTINUANCE:

The City may award contracts for particular products and/or models of equipment as a result of the solicitation. In the event that a product or model is discontinued by the manufacturer, the City, at its sole discretion, may allow the contractor to provide a substitute for the discontinued item. Contractor shall request permission to substitute a new product or model and provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.
- Documentation from the manufacturer confirming the price for the replacement item.
- The Deputy Finance Director or Department Director will be the sole judge in determining the allowable substitute, new product or model change for discontinued item.

22. COMMUNICATION IN ENGLISH:

It is mandatory that the Contractor's lead person assigned to any City's facility be able to speak, read and write in English in order to communicate at the site contact.

23. EMERGENCY TWENTY-FOUR HOUR SERVICE:

Emergency 24-hour service is to be provided by Contractor at no additional cost. The Contractor shall provide an emergency contact person, with phone number, who is authorized to release material to the City of Phoenix during non-business hours, in the event of an emergency repair requirement. Any changes in contacts must be promptly submitted to the City.

24. INDUSTRY STANDARDS:

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

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

The City reserves the right to waive minor variation(s) if in the opinion of the Public Works Department, Fleet Services Superintendent, the basic unit meets the general intent of these specifications.

The complete equipment/material Offer shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

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

25. MATERIALS RECEIPT:

Delivery or pick-up receipt authorized by the "Method of Ordering" must include the following:

- City requisition number, purchase order number, contract order release (COR) number, Auto Stores purchase order number, or contract agreement number, whichever is applicable
- Items listed individually by written description and part number
- Items unit priced extended and receipt totaled, excluding taxes
- Where discounts are applicable, unit prices are to be the contract "list prices" and applicable discount percent shown
- Quantity delivered
- City employee signature, date, and department name on each page if a multiple page receipt
- Receipt identification number and company name Legible copy issued to City's employee

26. WARRANTY:

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

27. DELIVERY TIMES:

All deliveries shall be made between the hours of 8:00 a.m. and 2:00 p.m., Tuesday through Thursday, excluding City holidays. To schedule and insure a delivery can be accepted call Public Works Department 24 hours prior to delivery. The Contractor shall, at the time of delivery, provide a third party inspection form along with the Public Works Department pre-delivery and warranty checklists.

28. LIQUIDATED DAMAGES:

If the Contractor fails to deliver the supplies or perform the services within the time specified in its contract, or any extension thereof, the actual damages to the City for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, the Contractor shall pay to the City as fixed, agreed, and liquidated damages for each calendar day of delay, the amount of \$1000.00. Procurement Division may terminate this contract in whole or in part as provided in the "Default" provision. In that event, the Contractor shall be liable for such liquidated damages accruing until such time as the City may reasonably obtain delivery or performance of similar supplies and services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence. The Deputy Finance

Director or Department Director will be the sole judge in determining the liquidated damages.

29. TOWING AND TRANSPORTATION:

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

30. MISCELLANEOUS FEES:

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste fees, shop supplies, freight and/or shipping and handling and other miscellaneous charges will not be paid; these charges must be included in the solicitation submittal price. Invoices will be processed for the submitted prices only.

Labor rates (Shop and On-Site) shall be charged as a flat hourly rate. Travel hours, Contractor(s) equipment, licensing, permits, overhead, environmental disposal, fuel surcharge and any other incidental fees will not be permitted under this agreement. Labor time period will be from "check in" and "check out" at either Contractor or City facilities. City business hours are defined as 6:00 a.m. to 5:00 p.m. (local Phoenix, AZ time) during regular business days and excluding City holidays (Non-City Business Hours: 5:01 p.m. to 5:59 a.m. non-regular business days and City Holidays). Contractor(s) should take these into consideration when preparing their Offer response.

31. SINGLE SOURCE FOR WARRANTY WORK:

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

32. ADMINISTRATION POLICY FOR THE WARRANTY POLICY:

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

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
BTE BODY COMPANY, INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Contractor will be paid within 30 days of submission of its invoices to City at the rates attached hereto.

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$225,000 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

To provide parts, maintenance and repair services to heavy duty trucks and equipment on an as-needed basis.



CONTRACT AMENDMENT

Date: 10/21/2019
Solicitation No.: RFA 20-FSD-026
SRM/SAP Contract No.: 4701007023
City Clerk Contract No.: **151182**
Amendment No.: 1

CITY OF PHOENIX
Public Works / Procurement
200 W. Washington Street
7th Floor
Phoenix, Arizona 85003

Contract Title: **OEM Scorpion Parts and Service**
Contractor Name: **BTE Body Company, Inc.**
Contractor email: patricia.ballentine@btebody.com

Buyer Name: **Amanda Cook**
Telephone No.: **602-256-5634**
Buyer email: amanda.cook@phoenix.gov


THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

Effective November 1, 2019 the following rates will apply:

Line Item No.	Description	Unit of Measure (UOM)	Unit Price (\$)
1	Shop Hourly Labor Rate	Hr	\$100
2	Shop Hourly Labor Rate-Emergency/After Normal Business Hours	Hr	\$156
3	On-Site Hourly Rate	Hr	\$100, with applicable trip charges.
4	On-Site Hourly Labor Rate-Emergency/After Normal Business Hours	Hr	\$156, with applicable trip charges.
5	Percentage (%) Mark up for Replacement Parts <i>*Supporting documentation must be submitted with every invoice for parts pricing.</i>	n/a	10% discount on parts when BTE is doing the service work. 2% discount for all other purchases.
6	Trip Charge	EA	\$150 per trip. (BTE Retains the right to waive the trip charge at our discretion).

ALL OTHER CONTRACT PRICES, TERMS, AND CONDITIONS WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of amendment. A signed copy must be returned to the Public Works/Procurement Division.



Ginger Spencer
Public Works Director



Signature

ATTEST:


Printed Name




Title


City Clerk
11-19-19

Date: 10/22/2019

Approved as to form this 9th day of January 2018. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.