

Request for Proposals # 22-945

**REQUEST FOR PROPOSALS
FOR
DISPOSAL OF SOLID WASTE
WITH ENERGY AND/OR MATERIALS RECOVERY**

Issued: March 24, 2022

Pre-Proposal Meeting: April 20, 2022 at 2:30 p.m.

Proposals Due: May 25, 2022 at 5:00 p.m. Central Time

ISSUED BY:

The Tulsa Authority for the Recovery of Energy

**NIGP Commodity Code:
910 - 27**

**Submit proposals
(sealed) to:**
City Clerk's Office
175 E. 2ND St.
Suite 260
Tulsa, OK 74103

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1.0 INTRODUCTION

1.1 Nature of Procurement

The Tulsa Authority for the Recovery of Energy (“TARE”) is soliciting proposals for the environmentally sound disposal of solid waste with energy and/or materials recovery (the “Contract Services”). TARE seeks to enter into an agreement (the “Service Agreement”) with a private entity for the provision of the Contract Services for an initial term of fifteen years (the “Initial Term”) with the option to extend for an additional five years upon mutual consent (the “Renewal Term” and collectively, with the Initial Term, the “Term”).

In consideration for undertaking the obligations requested herein, the proposer that enters into the Service Agreement with TARE (the “Company”) will be entitled to receive a fee based upon the tonnage of material delivered to the Company’s resource recovery facility (the “Facility”) and processed and disposed of in such applicable billing period.

1.2 TARE Objectives

As described in Section 2.1 below, TARE was formed to promote environmentally sound solid waste disposal with significant energy and/or materials recovery. Over the past 30-plus years, TARE’s primary disposal means has been through its successive contracts with the owner/operator of a waste-to-energy facility. The current contract is nearing its expiration date (as set forth in Section 1.8 below) and TARE is seeking proposals pursuant to this Request for Proposals for its future solid waste disposal with significant energy and or materials recovery. For purposes of this procurement, TARE will not consider proposals that primarily rely on landfill disposal as such disposal option is not consistent with TARE’s mission. Notwithstanding the above, TARE will entertain proposals that include the development of new facilities that do meet its objectives, and therefore would require that TARE landfill waste until the new facility is operational. It is anticipated that TARE will procure a landfill disposal contract that will (i) serve as TARE’s primary disposal option if it is unable to procure a satisfactory disposal with energy and/or materials recovery contract pursuant to this Request for Proposals, (ii) serve as TARE’s primary disposal option until a new facility is procured and becomes operational should such option be selected pursuant to this Request for Proposals, and/or (iii) will serve as the “bypass” option for waste that a facility (new or existing) procured pursuant to this Request for Proposals is unable to accept.

As described in Section 1.3 below, TARE has determined that a best value selection based on the criteria described in Section 5.0 herein will result in a contractual relationship that will be in the best interests of TARE and the residents of the City of Tulsa. TARE is seeking thoughtful proposals that will demonstrate that TARE’s objectives will be achieved. Such demonstration will be through the proposers’ proposed plan for performing the Contract Services, the proposers’ pricing proposals and their qualifications. TARE’s objectives include:

- Generally, receive excellent service at a reasonable cost
- Obtaining Contract Services using a commercially demonstrated technology that will result in significant energy and/or materials recovery

- Ensure adequate disposal capacity for the entire Term of the Service Agreement
- Receiving reliable service beginning as close to the expiration of TARE's existing contract as possible.

1.3 Brief Summary of Procurement Process

Procurement Process. TARE intends to award the contract to the company whose proposal is determined to be the most advantageous to TARE, taking into consideration the evaluation factors and criteria set forth in this Request for Proposals (the "Request for Proposals"). Following review, clarification (if necessary) and evaluation of proposals, TARE will work to negotiate a Service Agreement with the most advantageous proposer.

Issuance of Request for Proposals. This Request for Proposals is being issued following public notice and provides the basis for selecting the Company with which TARE proposes to enter into the Service Agreement for the services being procured pursuant to this Request for Proposals.

Prospective Proposers Optional Conference. Prospective proposers are invited to attend a virtual conference (see Section 4.2 herein) during which TARE will discuss the scope of the Contract Services and the procurement and selection process and will answer prospective proposers' questions.

Proposal Clarification. TARE reserves the right, at its sole discretion, to conduct discussions with proposers for the purpose of clarifying any information submitted in the proposal or assuring that the proposers fully understood and responded to the requirements of the Request for Proposals, and in connection therewith issue revisions to the Request for Proposals and permit proposers to submit revisions to their proposal.

Proposal Evaluation Process. Proposals received in response to this Request for Proposals will be reviewed first to determine which proposals are responsive and meet the minimum qualification standards set forth in Section 5.0 herein, and then evaluated in a manner consistent with the evaluation criteria set forth in Section 5.0 of this Request for Proposals.

Contract Negotiations. Following review, clarification and evaluation of proposals, TARE intends to select the most advantageous proposer with which to negotiate a final Service Agreement (the "Most Advantageous Proposer"). In the event TARE is unable to successfully negotiate a Service Agreement with such proposer, TARE in its discretion may negotiate with the next most advantageous proposer.

Execution of Service Agreement. Following negotiation of the Service Agreement for the contract services procured through this Request for Proposals, it is anticipated that TARE will adopt a resolution approving the Service Agreement after which the Service Agreement will be executed.

Protest Procedures. If a proposer wishes to protest any phase of the procurement process, it shall follow the protest procedures set forth in Section 4.9 herein.

1.4 Anticipated Procurement Schedule

The following Table 1.4 sets forth the anticipated timetable for the procurement of the Contract Services described in this Request for Proposals. TARE reserves the right to modify the schedule from time to time.

**TABLE 1.4
PROCUREMENT SCHEDULE**

<u>Event</u>	<u>Date</u>
Availability of Request for Proposals	March 24, 2022
Optional Prospective Proposers Conference	April 20, 2022
Proposer Request for Proposals Questions Due	April 29, 2022
Addendum with TARE Responses to Proposer Questions, if necessary	May 11, 2022
Proposals Due	May 25, 2022

Next Steps

Proposal Review, Clarification, Evaluation and Selection of Most Advantageous Proposer

Contract Negotiations with Most Advantageous Proposer

Contract Award

Contract Executed

Commence Contract Services

1.5 Inquiries and Correspondence

All proposals are to be submitted to:

Deputy City Clerk
City of Tulsa
175 E. 2nd Street
Suite 260
Tulsa, OK 74103

All inquiries and correspondence shall be sent by email. **Proposers or agents or representatives of proposers shall not contact any TARE or City employees other than Donny Tiemann, Project Buyer at dtiemann@cityoftulsa.org with respect to any aspect of the procurement or project, and any such contact may be grounds for disqualification from this procurement process.**

All such written questions or requests for clarifications shall be submitted no later than the date indicated in Table 1.4 above. All written questions which are received on or prior to this date will be considered. Answers to questions which TARE determines are of general applicability will be issued as addenda or clarifications.

No oral interpretation, instruction, or information concerning this Request for Proposals given by any employee or agent of TARE shall be binding on TARE and proposers relying on such oral information risk having their proposal deemed unresponsive by TARE. TARE will not be responsible for any explanation or interpretation of the Request for Proposals, unless such explanation or interpretation of the Request for Proposals is issued in the form of an addendum.

1.6 Definitions

Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the definitions section of the Term Sheet set forth in Appendix D hereto. In the event of any conflict, the definitions contained in the Term Sheet shall control.

1.7 Non-Discrimination

No person shall be excluded from participation in, denied any benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the basis of race, religious creed, color, national origin, ancestry, physical disability, sex, age, ethnicity, or on any other basis prohibited by law.

All proposers shall comply with all applicable laws regarding equal employment opportunity and nondiscrimination.

All proposers shall comply with the Americans with Disabilities Act (ADA) and all proposals and a subsequent contract, if any, shall include the following statement:

“The proposer shall take the necessary actions to ensure its facilities are in compliance with the requirements of the Americans with Disabilities Act. It is understood that the program of the proposer is not a program or activity of TARE or the City of Tulsa. The proposer agrees that its program or activity will comply with the requirements of the ADA. Any costs of such compliance will be the responsibility of the proposer. Under no circumstances will the proposer conduct any activity which it deems to not be in compliance with the ADA.”

1.8 Existing Agreement

TARE currently has a service agreement for the disposal of solid waste, green waste and rejects with energy and/or materials recovery with Covanta WBH, LLC that will expire on June 30, 2022. It is the intention of TARE to enter into a single contract with the selected proposer for

all TARE Acceptable Waste to be delivered to the Company's Facility for disposal/management following expiration of such service agreement.

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2.0 INFORMATION ON TARE AND TARE'S SOLID WASTE MANAGEMENT OPERATIONS

2.1 Generally

The Tulsa Authority for the Recovery of Energy (TARE) was organized in 1977 (as the “Tulsa Energy Resource Recovery Authority”) by the Board of Commissioners of the City of Tulsa, Oklahoma pursuant to the public trust statutes of the State of Oklahoma. TARE’s seven Trustees consist of the Mayor of the City of Tulsa and six other Trustees appointed by the Mayor and approved by the Tulsa City Council; the Mayor may designate annually a City employee to serve in his or her place. Trustees (other than the Mayor’s designee) serve staggered three-year terms. The beneficiary of the trust is the City of Tulsa.

TARE was organized generally for the purposes of operating or managing the City’s collection and disposal of Tulsa’s municipal solid waste (MSW) and to process and sell recyclable materials from such waste, as well as acquiring, establishing and operating (or regulating) facilities to serve such purposes. Since 1977 the Trustees—as reflected in the successive names of the trust—have had a primary and persistent focus on encouraging and developing processes that convert non-recyclable MSW into energy, adopting as its mission statement the objective to:

Protect public and environmental health by delivering cost-effective and efficient solid waste management services while promoting sustainable programs and policies that will ensure a safe and healthy community for residents of the City of Tulsa and future generations.

Accordingly, in the early 1980s the City of Tulsa commissioned the construction of an MSW incineration plant that has the capacity to burn more than 400,000 tons of MSW each year, powering boilers to produce steam that is either (a) sold to a nearby oil refinery for use in its refining operations or (b) used to power turbines that create electricity to be sold to the local electric utility. The plant’s emissions are strictly regulated and controlled by the state environmental regulatory agency. Metals that are recovered from the burners’ residue are sold in the recyclable metals market, and the residual ash from the incinerated MSW is beneficially used as landfill daily cover. The facility is privately owned, and the current disposal contract with the facility owner expires in June of this year.

In addition, TARE has contracted with: (1) a recycling operation to receive—from weekly City-wide collections—and process an average of more than 1,800 tons of recyclable materials each month for sale in the recyclable commodities markets, (2) a firm that recycles metals recovered from discarded electronics, and (3) another firm that recycles metals recovered from white goods. Moreover, TARE is also responsible for the management and operation of the City’s facility that recycles trees, brush and grass obtained from landscaping operations, converting them to mulch that is made available to the public, and another facility that processes and disposes of household pollutants, including paint, cleaning materials, and automotive liquids. Finally, TARE has in recent years entered into regional agreements with other communities which participate in TARE’s refuse and recycling programs.]

2.2 TARE Solid Waste

The tonnage per year (TPY) of TARE Acceptable Waste delivered to the Covanta facility during the last five years is set forth in Table 2.1.

Table 2.1

Year	Residential Solid Waste and Curbside Green Waste (TPY)	Rejects from Recycling Contract (TPY)
2017	105,475	5,313.59
2018	99,693	4,565.89
2019	103,186	5,552.58
2020	114,735	6,567.24
2021	106,715	1,119.62 *
		*NOTE: The recycling processing facility was down in 2021 for a substantial part of the year due to a fire

Appendix C shows the tonnage of TARE Acceptable Waste to the Covanta facility from 2020 through 2021 on a daily, monthly and annual basis.

2.3 Historical Waste Tonnage Information

Section 2.2 provides a historical perspective on the quantities of TARE Acceptable Waste that have been delivered to the Covanta facility. Appendix C provides daily, monthly and annual waste volume tonnages from 2020 – 2021. TARE does not guarantee that such volumes reflect future disposal requirements but has provided this data for informational purposes.

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3.0 SCOPE OF SERVICES SOUGHT

This section provides a brief summary of the performance responsibilities and financial obligations that the Company will assume in implementing the Contract Services. Appendix D of this Request for Proposals includes a Term Sheet that will be used as the basis for developing the Service Agreement which TARE anticipates executing with the Company. In the event of a conflict between the Term Sheet and any sections of this Request for Proposals, the Term Sheet shall govern.

3.1 General Company Responsibilities

TARE is seeking to enter into a contract with the Company for a term of fifteen years, with the possibility of one five-year renewal as described in Section 1.1 of this Request for Proposals, pursuant to which the Company would undertake full responsibility for the processing and disposal with energy and/or materials recovery of all TARE Acceptable Waste delivered to the Company's Facility. Company responsibilities include, but will not be limited to, the following:

- Process and dispose of all TARE Acceptable Waste utilizing energy and/or materials recovery at its Facility, all in accordance with Applicable Law.
- Comply with the performance guarantees to be included in the Service Agreement and will be responsible for paying damages to TARE for its failure to comply with such requirements.
- Obtain and maintain all necessary licenses, permits and approvals necessary to perform the Contract Services.
- Provide an adequately sized tipping area for the vehicles delivering TARE Acceptable Waste to unload with adequate space for delivery vehicle turn-around.
- Maintain records in accordance with Applicable Law and the requirements of the Service Agreement.
- Ensure that sufficient capacity for TARE's Acceptable Waste exists at the Facility throughout the Service Agreement Term.
- Ensure and maintain a reasonable turn-around time from entry to exit of the Facility for all vehicles carrying TARE Acceptable Waste.
- Obtain and maintain the insurance and security instruments as described in the Term Sheet.
- Sanctions may be imposed by TARE for the failure to maintain required turn-around times as described in the Term Sheet.

3.2 Other Company Responsibilities

Section 3.1 provides a general description of the scope of the Company's responsibilities. The Term Sheet set forth in Appendix D hereto, provides additional detail with respect to the Company's obligations.

3.3 TARE Responsibilities

In general, TARE shall be responsible for the following:

- TARE will deliver or cause to be delivered all TARE Acceptable Waste to the Facility.
- TARE will pay the Company on a monthly basis for the tonnage of TARE Acceptable Waste processed and disposed of by the Company in the previous month based on the per ton proposal price.
- TARE shall maintain regular communication with the Company to facilitate coordination of the efforts necessary to perform the Contract Services.

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4.0 PROCUREMENT PROCESS

4.1 Request for Proposals

TARE intends to award the contract to the proposer whose proposal is determined to be the most advantageous to TARE, taking into consideration the evaluation factors and criteria set forth in this Request for Proposals. The request for proposal process allows for negotiations with proposers and does not require TARE to select a proposer based solely on cost. Section 5.3 describes the evaluation criteria and weighting that will be given to each criterion.

4.2 Optional Pre-Proposal Conference

A virtual Pre-Proposal Conference will be held on April 20, 2022 at 2:30 pm. (Central Time)]. **Participants interested in attending should contact the Project Buyer at dtiemann@cityoftulsa.org to receive instructions.** Participation in the Pre-Proposal Conference is optional.

All participants of the virtual conference will have the opportunity to ask questions concerning this Request for Proposals, the current operations and for the purposes of clarifying any issues regarding the procurement process. Participants may submit questions in writing prior to the conference, and TARE will attempt to address such questions during the conference.

4.3 Inquiries

As stated in Section 1.5, proposers, its agents or representatives may not contact any TARE or City official or employee other than Donny Tiemann, Project Buyer, regarding the activities addressed in this Request for Proposals and such contact may result in disqualification of the proposer.

4.4 Addenda or Amendments to this Request for Proposals

During the period provided for the preparation of proposals, TARE may issue addenda to this Request for Proposals. These addenda will be available for downloading off the City's website, numbered consecutively and notice of such addenda will be distributed to each prospective proposer that registers its email address with TARE at the Pre-Proposal Conference. These addenda will be issued on behalf of TARE and will constitute a part of the Request for Proposals. Each proposer is required to acknowledge receipt of all addenda at the time of submission of the proposals by submitting an executed acknowledgment form included in Appendix A hereto. All responses to this Request for Proposals shall be prepared with full consideration of the addenda issued prior to the proposal submission due date.

4.5 Proposal Submission Due Date

All proposals shall be due no later than the time and date set forth in Section 6.1.

4.6 Proposal Review, Clarification and Evaluation

Proposals received in response to this Request for Proposals will be reviewed first to determine which proposals are responsive to this Request for Proposals and meet the minimum qualification standards set forth in Section 5.0 herein, and then evaluated in a manner consistent with the evaluation criteria set forth in Section 5.0 of this Request for Proposals. TARE may, at its sole discretion, conduct discussions with one or more proposers for the purpose of clarifying any information submitted in the proposal or assuring that the proposers fully understood and responded to the requirements of the Request for Proposals, and in connection therewith issue revisions to the Request for Proposals and permit proposers to submit revisions to their proposal.

4.7 Exceptions to the Business and Contractual Terms

The proposer may provide comments to the Term Sheet in the form of a markup to the Term Sheet in accordance with subsection 6.6.2.

4.8 Withdrawal from Procurement Process

A proposer may withdraw a proposal prior to the date and time set for the receipt of proposals provided that a written request to withdraw the proposal is hand delivered to the Deputy City Clerk, by or on behalf of an authorized representative of the proposer, or the request is delivered by certified mail.

4.9 Protests

If a proposer wishes to protest any phase of the procurement process, the proposer must do so in writing following the procedures outlined below.

1. Prior to Opening of the Proposals: Any proposer who is not in agreement with the Request for Proposals process may file a protest. The protest must be filed (and received by Purchasing) prior to the scheduled date and time of proposal opening.

2. After Opening of the Proposals: If protesting a contract award, the protest must be filed within seven (7) calendar days after the proposer knows or should have known of the facts giving rise to the protest and in no event later than fourteen (14) calendar days after the contract award.

Procedures for Protest Prior to or After Opening the Proposals: The objection shall be in writing and shall contain the following:

- The name, address, and telephone number of the person filing the objection;
- The name and number of the RFP being protested;
- A detailed statement of the factual grounds for the protest, including copies of any relevant documents;
- A request for a ruling by TARE;
- A statement as to the form of relief requested from TARE; and

- Any other information the person filing the objection believes to be essential to the determination of the factual questions at issue in the written statement.
- A protest should be forwarded to the following address:
dtiemann@cityoftulsa.org

The **Director of Purchasing** will issue a decision in writing stating the position of TARE and reasons for action taken.

Proposers acknowledge that the protest procedures set forth above are designed to provide proposers with the opportunity to make a timely administrative challenge regarding the procurement, and to provide certainty to TARE (in the event no timely protests are filed) with respect to its actions moving forward. Proposers further acknowledge by submitting its proposal, that proposers waive the right to bring any judicial challenge to this procurement unless it has first complied with the protest procedure and time requirements set forth above.

4.10 Disposal of Proposals

All proposals accepted by TARE are the property of TARE and will not be returned. At the conclusion of the procurement process, TARE may dispose of any and all copies of proposals received in whatever manner it deems appropriate.

4.11 Confidentiality

By submitting a response to this Request for Proposals, Proposer understands and acknowledges that TARE is subject to the Oklahoma Open Records Act (51 O.S. §24A.1 et seq.) and therefore cannot assure the confidentiality of contract terms or other information provided by Proposer pursuant to this RFP that would attempt to prevent TARE from complying with its statutory requirements. Any information submitted by Proposer to TARE which Proposer deems to be a trade secret must be submitted in a separate envelope and clearly marked "Trade Secret Information" and include the name of the Proposer. Proposer must timely seek judicial action to protect such information from disclosure by TARE in the event of a request to TARE under the Oklahoma Open Records Act.

4.12 Rights and Conditions of TARE

TARE reserves, holds and may exercise, at its sole discretion, the following rights and conditions with regard to this Request for Proposals. By responding to this Request for Proposals, proposers acknowledge and consent to the following rights and conditions relative to the procurement process:

- TARE reserves the right to not award a contract for any services.
- TARE reserves the right to change or alter the schedule for any events associated with this procurement upon notice to the proposers.

- All costs incurred by a proposer in connection with responding to this Request for Proposals will be borne by the proposer.
- TARE reserves the right to reject, for any valid reason, any and all proposals and components thereof and to eliminate any and all proposers responding to this Request for Proposals from further consideration for this procurement.
- TARE reserves the right to eliminate any proposer who submits incomplete, inadequate responses or is not responsive to the requirements of this Request for Proposals.
- TARE reserves the right, without prior notice, to supplement, amend, or otherwise modify this Request for Proposals at any time, to request additional information and/or to request best and final offers.
- All proposals become the property of TARE, may be destroyed, and will not be returned.
- All activities related to this procurement shall be subject to all Applicable Law.
- Any and all proposals not received by the time and date set forth in Section 6.1 will be rejected and returned unopened.
- TARE (including its staff and consultants) reserves the right to visit and examine any of the facilities or sites referenced in each proposal to observe and investigate the sites or the operations of such facilities.
- Neither TARE, its staff, nor any of its consultants will be liable for any claims or damages resulting from the solicitation, submission, collection, review, or evaluation of proposals.
- TARE may request proposers to send representatives to TARE for interviews and presentations.
- TARE reserves the right to conduct investigations of the proposers and their proposals, to clarify the information provided pursuant to this Request for Proposals, and to request additional evidence to support the information included in any proposal.
- TARE reserves the right to waive any irregularities or clerical errors in a proposal and to award the Service Agreement to that proposer if, in the judgment of TARE, it would be in TARE's best interest to do so.

5.0 MINIMUM QUALIFICATION REQUIREMENTS AND EVALUATION CRITERIA

Proposals submitted will be evaluated in accordance with the provisions set forth in this Section 5.0.

5.1 Responsiveness and Minimum Technical Qualifications

Upon receipt of proposals, the Project Team will review the proposals to determine responsiveness with submittal requirements. TARE reserves the right, but is not obligated, to request information necessary for a determination of responsiveness.

Following the determination of responsiveness with submittal requirements, the Project Team will review each complete and responsive proposal to determine if the Minimum Qualification Requirements set forth in this Section 5.1 have been satisfied. Only those proposals which are determined to be qualified proposals will be fully evaluated by the Project Team. TARE may, in its discretion, request clarification from a proposer to determine if the Minimum Qualification Requirements have been satisfied. Alternatively, in the event any proposal does not clearly demonstrate that the proposer has met the Minimum Qualification Requirements, TARE may decline to review and evaluate such proposal.

All proposers must demonstrate the following minimum technical qualifications:

1. Within the last five years, the proposer's team has performed solid waste processing and disposal with energy and /or materials recovery services using the proposed technology that are similar in nature to the scope of the Contract Services.
2. Provide a minimum of two operating reference facilities with similar technology as proposed, and capable of processing a minimum of 100,000 TPY of Acceptable Waste
3. Has not defaulted on any disposal contract that was awarded during the last five years.
4. Has qualified and experienced personnel that will be dedicated to the project.

5.2 Performance Bond

All proposers must demonstrate the ability to secure a performance bond in the amount of \$1,000,000 by submitting a completed and executed Letter from Surety to Issue a Performance Bond in substantially the form included in Appendix A hereto.

5.3 Evaluation Criteria

Proposals that are determined to be responsive to this Request for Proposals and that meet the Minimum Technical Requirements set forth in Section 5.1 will be evaluated pursuant to the criteria set forth in this Section 5.3.

It is the objective of TARE to select a qualified proposer whose proposal is judged, after undergoing the selection process described in this Request for Proposals, to be in the best interests of TARE.

The proposals will be evaluated based upon four categories of criteria: (1) Approach; (2) Qualifications and Experience; (3) Price Proposal; and (4) Business Merit. For the purpose of evaluating proposals, these evaluation criteria will be given the following weights:

1) Approach	40 Points
2) Qualifications and Experience	15 Points
3) Price	40 Points
4) Business Merit	5 Points

5.3.1. Approach

Criteria to be applied to evaluate the Approach may include, but not be limited to:

- Feasibility – To what degree of certainty will the Proposer be able to deliver the Contract Services in a consistent and timely manner? Considerations may include, but not be limited to, whether the Facility is planned or existing; if existing, what modification if any may be necessary; if not existing, has the site been obtained; and likelihood of necessary permits and financing being obtained in a timely manner.
- Reliability – What is the anticipated “availability” of the technology being proposed? Will the proposed technology be consistently available throughout the Term?
- Degree of Recovery – How much energy and/or materials will be recovered from TARE Acceptable Waste? What type of energy is expected to be recovered?
- Schedule – How soon after the expiration of TARE’s current disposal contract will the proposer be able to accept and process TARE Acceptable Waste at its proposed Facility?
- Other aspects to the proposer’s approach that TARE deems relevant to the evaluation.

5.3.2. Qualifications and Experience

Criteria that will be applied to evaluate each qualified proposer’s experience may include, but not be limited to:

- Company and technology past performance providing services substantially similar to the Contract Services
- Experience and qualifications of proposer’s key personnel that will be instrumental to providing TARE high quality service
- Proposer history of environmental compliance including at the Facility
- Safety record
- References
- Material litigation history of proposer over the last five years
- Other aspects of the proposer’s qualifications and experience that TARE deems relevant to the evaluation

5.3.3. Price Proposal

TARE has determined that cost is a major element, but not the only element, in its decision to select the most advantageous proposer. Price Proposals will be evaluated based upon:

- Cost to TARE for the Contract Services based upon pricing included on Proposal Form 2 and the escalation indices proposed on Proposal Form 9.
- Transportation cost to TARE and haulers delivering TARE Acceptable Waste to the Facility
- Other aspects of the pricing and costs related to the proposal that TARE deems relevant to the evaluation

5.3.4. Business Merit

Criteria that will be applied to evaluate each qualified proposer’s business merit will include, but not be limited to:

- The nature and extent of exceptions, if any, that the proposer takes to the Term Sheet
- TARE will also evaluate the financial strength of the Company and its Guarantor (see subsection 6.6.2 below), if applicable
- Other business aspects of the proposal that TARE deems relevant to the evaluation

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6.0 INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF ALL PROPOSALS

6.1 Proposal Submission; Timing of Submission; Number of Proposals to be Submitted

Proposals must be delivered to and received by no later than 5:00 p.m. Central Time on Wednesday, May 25, 2022. One (1) unbound hard copy and five (5) bound copies of the proposal, and 1 compact disk or flash drive containing the proposal in PDF format, shall be submitted to:

Deputy City Clerk
City of Tulsa
175 E. 2nd Street
Suite 260
Tulsa, OK 74103

NO COPIES SHALL BE SENT TO ANY PROJECT TEAM MEMBER.

Proposals that are not received by 5:00 p.m. may be rejected. TARE will return late proposals to the proposer unopened.

Proposals must be enclosed in a sealed envelope or box bearing the name and address of the proposer. **THE NAME OF THE PROPOSAL AND THE REQUEST FOR PROPOSALS NUMBER TO WHICH IT IS ADDRESSED MUST BE DESIGNATED ON THE OUTSIDE OF THE ENVELOPE OR BOX.**

All proposals submitted will remain unopened until the deadline for submission of the proposals has passed. All proposal openings are public and take place at 8:30 a.m. Thursday, the day after proposals are due. The proposal openings are held in the City of Tulsa Council meeting Room, 175 East 2nd Street, 2nd floor, Tulsa, Oklahoma. Note that only the name of each proposer will be made public at the proposal opening and not the balance of the proposals.

The delivery of the proposal to TARE on the above date and prior to the time specified herein is solely and strictly the responsibility of the proposer.

6.2 Completeness

The proposer must follow each and all of the instructions set forth in this Section in order for a proposal to be deemed responsive to this Request for Proposals. In all cases, TARE reserves the right to determine, at its sole discretion, whether any aspect of the proposer's proposal meets the submission requirements of this Request for Proposals. TARE reserves the right to reject any proposal which, in its judgment, does not comply with these proposal submission guidelines. In providing the information required within this Section, the proposer should emphasize and should be responsive to the evaluation criteria described in Section 5.0 of this Request for Proposals.

6.3 Cover Letter and Signature Requirements

Together with each proposal, TARE must receive one original cover letter on the letterhead of the proposer acknowledging, among other things, that the proposer has completely reviewed and understands and agrees to be bound by the requirements of this Request for Proposals, and such letter commits the proposer, if selected, to carry out the provisions of the proposal. Such cover letter must further state that (a) all information submitted in support of the proposal is accurate and factual; (b) all representations made regarding the proposer's concurrence with the proposed business arrangement are true; (c) the proposal is provided fairly, without collusion or fraud; and (d) the proposer will, if chosen as the Company, perform the work and services set forth in the proposal. The cover letter must designate a contact person for all communications to and from TARE with respect to this procurement.

The cover letter must be signed by an officer of the proposer who is empowered to sign such material and to commit the proposer to the obligations contained in the proposal. A certificate attesting to such authorization must be attached to the cover letter. If the proposer is a partnership, the proposal shall be signed by one or more of the general partners. If the proposer is a corporation, the authorized officer shall sign his/her name and his/her title beneath the full corporate name. If the proposer is a limited liability company, the Manager shall sign his/her name and his/her title beneath the full company name. Anyone signing the proposal as agent must file with it legal evidence of his/her authority to execute such proposal.

ALL FORMS WHICH REQUIRE SIGNATURES OF THE PROPOSER SHALL BE SIGNED BY THE SAME INDIVIDUAL(S) SIGNING THE COVER LETTER.

6.4 Proposal Forms

Appendix A contains the Proposal Forms. A completed set of Proposal Forms must be included in each proposal.

Each proposer must fill out all of the forms completely. Use "N/A" to specify any items set forth in the Proposal Forms which are not applicable to a proposer. It should be noted, however, that the failure to fully complete all applicable Proposal Forms by incorrectly providing that certain Proposal Forms (or portions thereof) are not applicable to a proposer may result in a determination that the proposal is unresponsive. To provide additional information, use separate sheets following the Proposal Form format.

In cases where a written price is used with a numeric price, the written price will govern. If a discrepancy exists between totals and itemized breakdowns, the totals will govern.

6.5 Organization and Form of Proposal

6.6.1 Organization of Proposal.

In general, each proposal shall contain all information which may be of importance to the Project Team in selecting a Company for performance of the Contract Services. The proposer

shall provide information in accordance with the content and format requirements set forth in this Request for Proposals. Proposals submitted in response to this Request for Proposals should consist of the following sections:

SECTION I: Executive Summary

1. Table of Contents
2. Proposal Cover Letter
3. Proposal Submission Form (Proposal Form 1)
4. Proposal Checklist (Proposal Form 6)
5. Acknowledgement of Addendum (included in Proposal Form 1)
6. Business Registration Certificate, if applicable
7. Executive Summary
8. Proposer Information Sheet (Proposal Form 8)

SECTION II: Qualifications and Experience

1. Company/Proposer Information
2. Demonstration of Minimum Technical Qualifications
3. Relevant Company and Technology Experience
4. Key Project Staff and Qualifications and Experience
5. History of Environmental Compliance
6. Safety Record
7. Three References
8. Litigation History
9. Additional Qualifications and Experience Information

SECTION III-A: Technical Approach Proposal

1. Approach Generally
2. Feasibility
3. Reliability
4. Degree of Energy and/or Materials Recovery
5. Schedule including Proposed Contract Commencement Date (Proposal Form 10)
6. Additional Technical Information, if any

SECTION IV: Business Proposal

1. Interest Affidavit (Proposal Form 3)
2. Non-Collusion Affidavit (Proposal Form 4)
3. Guarantor Acknowledgement, if applicable (Proposal Form 7)
4. Financial Information
5. Surety Letter of Intent – Performance Bond (Proposal Form 6)
6. Exceptions to Term Sheet, if any

SECTION V: Price Proposal

1. Price Proposal Form (Proposal Form 2)

2. Proposed Service Fee Escalation Indices (Proposal Form 9)
3. Location of Facility

Upon request, TARE will supply the Proposal Forms in electronic format. Any changes to the Proposal Forms may be grounds for disqualification.

6.6.2. Form of Proposal

The proposer shall provide the appropriate information required for each section, in accordance with the following content and format requirements:

- The responses shall be concise, clear, factual, and complete with a minimum of extraneous material.
- The information provided shall reference, to the extent practicable, the Section of the Request for Proposals being addressed.
- The proposal shall be indexed and divided into sections and shall be prefaced with a table of contents.
- Proposals shall be bound in a manner that will allow for easy reproductions (e.g., 3-ring binders are acceptable).

Section I: Executive Summary

The Executive Summary shall summarize, in clear and concise language, the key aspects of the information contained in all other parts of the proposal. The executive summary should include a clear statement of the proposer's understanding of the Request for Proposals, identify the proposer's key team members and their respective roles, briefly describe the significant aspects of the proposal, noting how the proposer meets the requirements of the Request for Proposals and the Service Agreement.

The Executive Summary shall be limited to 10 pages (exclusive of the Proposal Forms).

Section II: Qualifications and Experience Proposal

A proposer is requested to include in its Qualifications and Experience Proposal all information necessary to permit the Project Team to make an informed evaluation under each sub-criterion and evaluation factor stated in Section 5.3.2. The proposer shall provide all of the information necessary for TARE to determine the experience and capabilities of the proposer.

A proposal submitted in response to this Request for Proposals must contain a Qualifications and Experience Proposal that fully conforms with and satisfies the format and content requirements of this Request for Proposals, and sets forth the proposer's qualifications, experience and capability to perform the Contract Services.

Failure to provide any of the requested information that is available to the proposer may be grounds for disqualification. If the requested information does not exist or cannot be provided, the proposer shall state so with an explanation as to why such information has not been provided.

By submission of its proposal, the proposer grants TARE and its representatives the right to contact and visit any of the named projects, as well as any projects not named, for the purpose of evaluating the proposer's performance or for validation of information provided in the proposer's proposal. This includes contacting any person who is or was associated with each project.

TARE reserves the right to conduct an investigation of the proposer's and its subcontractors' technical qualifications by contacting project references or accessing public information. Additional information may be requested during the technical qualifications review.

Minimum Technical Qualifications

The proposal shall provide the necessary information to clearly demonstrate that the proposer meets all of the Minimum Technical Requirements:

1. Within the last five years, the proposer team has performed solid waste processing and disposal with energy and/or materials recovery services using the proposed technology that are similar in nature to the scope of the Contract Services.
2. Provide a minimum of two operating reference facilities with similar technology as proposed, and capable of processing a minimum of 100,000 TPY of Acceptable Waste, one of which has been operated by the proposer and one of which has operated for a minimum of two years.
3. Has not defaulted on any disposal contract that was awarded during the last five years.
4. Has qualified and experienced personnel that will be dedicated to the project.

Qualifications and Experience

The proposal shall include a description of the Company and technology past performance providing services substantially similar to the Contract Services.

The proposal shall include a description of the proposer's team, including, the form of business structure (corporation, partnership, joint venture, etc.) that it is proposing and will serve as the contracting party. Experience and qualifications of proposer's key personnel that will be instrumental to providing TARE high quality service shall be included.

The proposal shall include the Proposer's history of environmental compliance including at the Facility. In addition, the proposer shall describe its experience and record of compliance with permits, licenses, approvals, consent decrees and other regulatory actions applicable to the processing and disposal of solid waste.

The proposal shall state whether, during the past five years, the proposer and any of its team members have failed to complete any contract, or has been terminated for poor performance or default by the company, any officer, or affiliate, or has been barred from bidding on public contracts by the federal government or by any governmental entity in the State of Oklahoma or any other state; any officer of the company has failed to complete work under a contract handled in his/her own name or has been convicted of any conduct or been found in violation of any federal, state or local statute, regulation or court order concerning antitrust, public contracting, employment discrimination or prevailing wages; the company, any affiliate or predecessor, or any other or any officer of the company filed for bankruptcy; whether any landfill is under contract by the company. Proposer shall also indicate whether the proposer has faced litigation for any of the foregoing or is presently involved in any material litigation involving any of the above-referenced information or matters over the past five years.

In addition, the proposal shall provide the proposer's record of safety and three references.

Section III - Technical Approach Proposal

Proposers shall demonstrate their ability to perform the Contract Services by providing the proposed technical approach of the proposer.

At a minimum, the proposer shall provide the following information to demonstrate its technical approach:

- Description – A comprehensive description of the proposer's plan to provide the Contract Services. The description shall identify any Solid Waste not listed in the definition of Unacceptable Waste that the proposer will not be able to accept.
- Feasibility - Information regarding the feasibility of the proposer's ability to deliver the Contract Services in a timely and consistent manner, including information regarding the current status of the Facility, any necessary modifications, if planned but not yet existing, site, permits, environmental reviews and financing plans and status.
- Reliability - Information regarding the anticipated "availability" of the technology being proposed and the basis for such anticipated availability.
- Degree of Recovery – A description of the technology and the nature or type and degree of energy and / or materials that will be recovered from TARE Acceptable Waste with appropriate supporting materials.
- Schedule – The proposer's schedule for commencing Contract Services and appropriate supporting information.

Section IV: Business Proposal

This Section shall present the business and financial aspects of the proposal. The proposer shall submit sufficient information so that TARE can evaluate the proposer's financial ability to satisfy

the anticipated requirements of the Service Agreement as reflected in the Term Sheet. The subsequent subsections outline the type of information that shall be included in the proposer's business and financial submission.

Interest Affidavit

The proposer shall complete and submit Proposal Form 3 (Interest Affidavit) to indicate the names and addresses of any owner(s) of the Company (that will enter into the Service Agreement) who own 5% or more of equity in the Company.

Non-Collusion Affidavit

Proposers shall complete and sign Proposal Form 5 (Non-Collusion Affidavit), which acknowledges that the proposal has been made and submitted in good faith and without collusion or fraud.

Guarantor Acknowledgement, if applicable

In the event a Guarantor is being proposed, the proposer must have the Guarantor complete and sign the Guarantor Acknowledgement. The Guarantor will be required to sign a Guaranty Agreement with TARE generally in the form to be set forth in the Appendices to the Term Sheet, in which it will irrevocably, absolutely, and unconditionally guarantee the performance of all obligations of the Company under the Service Agreement.

Financial Information

Proposers may propose to include a guarantor ("Guarantor") of the Company's obligations under the Service Agreement in order to enhance its financial qualifications.

Proposers shall submit the following information:

- Annual audited financial reports (including balance sheets, income statements, statements of changes in financial position and cashflow statements) for each of the past three years for (a) the Company, and (b) the Guarantor, if applicable, prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), and all relevant notes. If the responding entity is not a public company, it will provide independently audited financial statements and may request the information be treated confidentially by TARE. If the Company or Guarantor, as applicable, has been in existence less than three years, the information will be provided for the period of its existence.
- The most recent Form 10-K and Form 10-Q filed with the Securities and Exchange Commission ("SEC") by (a) the Company, and (b) the Guarantor; or, if one or more of these parties are not regulated by the SEC, then the most recent quarterly financial report for each such party. This quarterly financial report may be prepared internally but must be approved and signed by an officer of the company.

Surety Letter of Intent to Issue a Performance Bond

Proposal Form 10 (Surety Letter of Intent - Performance Bond) shall be duplicated and provided on the official letterhead of the proposer's surety company. The proposer must provide a surety company that complies with the requirements set forth in the Term Sheet. Proposal Form 10 acknowledges, among other things, that the proposer's surety company has reviewed and understands the requirements of this Request for Proposals and the Term Sheet and intends to issue a Performance Bond in favor of TARE as security for the performance of the Company's obligations under the Service Agreement, as negotiated between the parties based on the Request for Proposals and the proposal subject to the surety's review of such negotiated Service Agreement.

Exceptions to the Business and Contractual Terms

The proposer shall indicate its willingness to enter into the Service Agreement based upon the provisions included in the Term Sheet. Acceptance of the terms and conditions of the Term Sheet will be a factor in the evaluation of proposals. However, TARE recognizes that proposals may be conditioned on the mutual resolution of particular issues identified by proposers. The proposer shall indicate its willingness to accept the Term Sheet as stated or indicate specific provisions to which the proposer takes exception and offer alternative language which the proposer would accept in the form of a neatly hand-written mark-up or a "track-changes" electronic mark-up of the Term Sheet. To the extent such mark-up would be too extensive, the proposer shall provide the proposer's substitute language for this marked text as typed riders.

In evaluating proposed terms and conditions, TARE will assume that the proposal includes all suggested changes to the Term Sheet and that the proposer accepts all terms and conditions in the Term Sheet that are not specifically addressed in its mark-up of the Term Sheet.

Proposers are cautioned that significant deviations from the terms and conditions set forth in the Term Sheet may result in fewer or no points being awarded to the proposer under the business merit criterion. In addition, to the extent that the proposed changes to the terms and conditions substantially change the nature of the transaction or the scope of services, TARE may reject the proposal in its sole discretion as non-responsive to the requirements of this Request for Proposals. In the event of a conflict between the Term Sheet and other Sections of the Request for Proposals, the Term Sheet shall govern.

Section V: Price Proposal

A proposal submitted in response to this Request for Proposals must contain a Price Proposal (Proposal Form 2) that fully conforms with and satisfies the format and content requirements described herein and sets forth the proposer's proposed Service Fee to perform the Contract Services. By submitting a proposal, each proposer agrees that the pricing terms submitted in connection with the proposal shall be held firm for a period of 365 days following the Proposal Date.

Proposer must complete Proposal Form 9. It is the intention of TARE that the fee proposed on Proposal Form 2 will escalate in accordance with one or more indices that appropriately correspond to the cost components reflected in such fee. The evaluation of the price proposal will take into consideration the information provided on Proposal Form 9.

The proposer shall also identify the location of the Facility so that transportation costs can be evaluated.

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APPENDIX A
PROPOSAL FORMS

PROPOSAL FORM NO. 1 – PROPOSAL SUBMISSION
TULSA AUTHORITY FOR RECOVERY OF ENERGY
REQUEST FOR PROPOSALS
FOR
DISPOSAL OF SOLID WASTE
WITH ENERGY AND/OR MATERIALS RECOVERY

PROPOSAL TO:

Deputy City Clerk
City of Tulsa
175 E. 2nd Street
Suite 260
Tulsa, OK 74103

PROPOSAL FROM:

Name: _____

(Print or Type Name of Proposer)

(/A Corporation/A Partnership/An Individual/A Joint Venture/A Limited Liability Company)

[Proposer to strike out inapplicable terms.]

Address: _____

Phone No. (____) _____ Fax No. (____) _____

Gentlemen:

The undersigned proposer proposes and agrees, if this proposal is accepted, to enter into the Service Agreement with TARE to perform all Contract Services as specified or indicated in the Term Sheet for the price proposed in Proposal Form No. 2. In addition, the undersigned agrees to negotiate any aspects of this proposal in good faith.

Proposer accepts all of the terms and conditions of the Request for Proposals (except to the extent the proposer has proposed revisions to the Term Sheet), including without limitation those dealing with the disposition of Proposal Security. Proposer will sign the Service Agreement and will furnish the required contract security, and other required documents within the time periods set forth in the Request for Proposals.

In submitting this proposal, proposer represents that:

- A. Proposer has examined and carefully studied the Request for Proposals, the other related data identified in the Request for Proposals, if any, and the following Addenda, receipt of all of which is hereby acknowledged. **If no addenda have been issued, indicate “NONE”.**

<u>Addendum No.</u>	<u>Date Received</u>	<u>Addendum No.</u>	<u>Date Received</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- B. Proposer has visited the locality where the Contract Services are to be performed and has become familiar with and is satisfied as to the general, local, site and other conditions that may affect cost, progress, and performance of the Contract Services.
- C. Proposer is familiar with and is satisfied as to all Applicable Law that may affect cost, progress and performance of the Contract Services.
- D. Proposer has carefully studied all available documents and has made all independent investigations as proposer deems necessary.
- E. Proposer does not consider that any further document reviews, investigations, or data are necessary for the determination of this proposal for performance of the Contract Services at the price proposed and in accordance with the other terms and conditions of the Request for Proposals.
- F. Proposer is aware of the general nature of work, if any, to be performed by TARE and others at the site that relates to the Contract Services as indicated in the Request for Proposals.
- G. Proposer has given TARE written notice of all conflicts, errors, ambiguities, or discrepancies that proposer has discovered in the Request for Proposals (if any), and the written resolution thereof by TARE is acceptable to proposer.
- H. The Request for Proposals is generally sufficient to indicate and convey the understanding of all terms and conditions for the performance of the Contract Services for which this proposal is submitted.

The proposer further represents that this proposal is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or

corporation; proposer has not directly or indirectly induced or solicited any other proposer to submit a false or sham proposal; proposer has not solicited or induced any individual or entity to refrain from bidding; proposer has not sought by collusion to obtain for itself any advantage over any other proposer or over TARE; and that no person or persons acting in any official capacity for TARE are directly or indirectly interested in this proposal, or in any portion of the profit thereof.

Signature

Print Name

Date

The following documents are attached to and made a condition of this proposal (unless specifically indicated otherwise):

- A. Proposal Form 2 - Proposal Price Form.
- B. Proposal Form 3 – Interest Affidavit.
- C. Proposal Form 4 - Non-collusion Certificate.
- D. Proposal Form 7 - Guarantor Acknowledgement, if applicable
- E. Proposal Form 6 - Checklist (optional).
- F. Markup to Term Sheet.
- G. Proposal Form 5 - Letter from Surety Company to Issue Performance Bond
- H. Proposal Form 8 – Proposer Information Sheet
- I. Proposal Form 9 – Proposed Escalation Indices
- J. Proposal Form 10 – Scheduled Commencement Date

Submitted on _____, 2022.

If proposer is:

An Individual

By: _____
(Individual's Signature)

(Printed or Typed Name of Individual)

Doing business as: _____

License or Registration Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Partnership

By: _____
(Firm Signature)

(General Partner's Signature)

(Printed or typed Name of General Partner)
(Attach evidence of authority to sign)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Corporation

By: _____
(Corporation Name)

(Signature of Incorporation)

(Signature of Officer Authorized to Sign)

(Printed or Typed Name and Title of Officer Authorized to Sign)
(Attach evidence of authority to sign)

Attest: _____
(Secretary)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Limited Liability Company

By: _____
(Firm Name)

(State of Formation)

(Signature of Member/Authorized to Sign)

(Printed or Typed Name and Title of Member Authorized to Sign)
(Attach evidence of authority to sign)

License or Registration Number: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Joint Venture

Joint Venture Name: _____

By: _____
(Signature)

(Printed or Typed Name) (Title)

(Address)

By: _____
(Signature)

(Printed or Typed Name) (Title)

(Address)

Phone and Fax number and address for receipt of communications to joint venture:

(Each joint venturer must sign. The manner of signing for each individual, partnership, corporation or limited liability company that is a party to the joint venture shall be in the manner indicated above).

PROPOSAL FORM NO. 2 – PROPOSAL PRICE
REQUEST FOR PROPOSALS
FOR DISPOSAL OF SOLID WASTE
WITH ENERGY AND/OR MATERIALS RECOVERY

I. INITIAL TERM

The proposer will perform the Contract Services in accordance with the Request for Proposals during the Initial Term for the following compensation:

\$_____ per Ton.

*Note: The price stated above should not include the Pass-Through Charge identified below. The price stated above will be escalated in accordance with the escalation indices agreed upon by the parties.

II. RENEWAL TERM

The proposer will perform the Contract Services in accordance with the Request for Proposals during the Renewal Term for the following compensation:

\$_____ per Ton.

*Note: The price stated above should not include the Pass-Through Charge identified below. The price stated above will be escalated in accordance with the escalation indices agreed upon by the parties.

Pass Through Charge

Proposers must identify the Pass-Through Charge charged by ODEQ and collected at the Facility on a per Ton basis.

1. \$_____/ton – ODEQ Disposal Fee

Signature of Proposer

Print Name

Date

PROPOSAL FORM NO. 3

INTEREST AFFIDAVIT

STATE OF _____)

)ss.

COUNTY OF _____)

I, _____ of lawful age, being first duly sworn, state that I am the agent authorized by Proposer to submit the attached Proposal. Affiant further states that no officer, TARE trustee or employee of the City of Tulsa either directly or indirectly owns a five percent (5%) interest or more in the Proposer's business or such a percentage that constitutes a controlling interest. Affiant further states that the following officers and/or employees of the City of Tulsa own an interest in the Proposer's business which is less than a controlling interest, either direct or indirect:

By: _____
Signature

Title:: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Notary Commission Number: _____

County & State Where Notarized: _____

The Affidavit must be signed by an authorized agent and notarized

PROPOSAL FORM NO. 4

NON-COLLUSION AFFIDAVIT

NON-COLLUSION AFFIDAVIT

(Required by Oklahoma law, 74 O.S. §85.22-85.25)

STATE OF _____)
)ss.

COUNTY OF _____)

I, _____, of lawful age, being first duly sworn, state that:

(Seller's Authorized Agent)

1. I am the authorized agent of Proposer herein for the purposes of certifying facts pertaining to the existence of collusion between and among Proposer and municipal officials, TARE trustees or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the proposal to which this statement is attached.
2. I am fully aware of the facts and circumstances surrounding the making of Proposer's Proposal to which this statement is attached, and I have been personally and directly involved in the proceedings leading to the submission of such proposal; and
3. Neither the Proposer nor anyone subject to the Proposer's direction or control has been a party:
 - a. to any collusion among Proposers in restraint of freedom of competition by agreement to proposal at a fixed price or to refrain from proposing,
 - b. to any collusion with any TARE Trustee or staff member or any municipal official or employee as to quantity, quality, or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between Proposers and any municipal official or TARE trustee concerning exchange of money or other thing of value for special consideration in the letting of a contract.

By: _____
Signature

Title:: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Notary Commission Number: _____

The Affidavit must be signed by an authorized agent and notarized

AFFIDAVIT OF CLAIMANT

STATE OF _____)

)ss.

COUNTY OF _____)

The undersigned, of lawful age, being first duly sworn, on oath says that this contract is true and correct. Affiant further states that the work, services or materials will be completed or supplied in accordance with the contract, plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly of money or any other thing of value to any elected official, officer or employee of the City of Tulsa or any public trust of which the City is a beneficiary to obtain or procure the contract or purchase order.

By: _____

Signature

Name: _____

Company: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Notary Commission Number: _____

This Affidavit must be signed by an authorized agent and notarized

PROPOSAL FORM NO. 5

**SURETY LETTER OF INTENT TO
ISSUE PERFORMANCE BOND**
(to be typed on Surety's Letterhead)

Deputy City Clerk
City of Tulsa
175 E. 2nd Street
Suite 260
Tulsa, OK 74103

Re: Solid Waste Disposal Services with Energy and/or Materials Recovery

_____ (the Proposer) has submitted herewith a proposal in response to TARE's Request for Proposals for the Disposal of Solid Waste with Energy and/or Materials Recovery (the "Request for Proposals"). The Request for Proposals requires the proposer to enter into an agreement to provide the Contract Services, if the proposer is awarded the Service Agreement.

The Surety has reviewed the proposer's proposal which will form the basis of the Service Agreement. Subject to the Surety's review of the final Service Agreement, the Surety intends to issue on behalf of the proposer, as additional security for the Company's obligations under the Service Agreement, the requisite Performance Bond in the form required by TARE for the benefit of TARE in the event the proposer is awarded the Service Agreement by TARE.

Name of Surety
Name of Authorized Signatory

Signature _____
Title:

Acknowledged:
[Proposer]

By _____
Printed Name:
Title:

PROPOSAL FORM NO. 6
PROPOSAL ITEMS CHECKLIST

	↓ Items required with proposal	Items submitted with proposal (Proposer's INITIALS)
		↓
<u>X</u>	Proposal Submission (Proposal Form No. 1)	
<u>X</u>	Proposal Price (Proposal Form No. 2)	
<u>X</u>	Interest Affidavit (Proposal Form No. 3)	
<u>X</u>	Surety Letter of Intent to issue Performance Bond (Proposal Form No. 5)	
<u>X</u>	Acknowledgement of receipt of addenda or revisions (included in Proposal Form No. 1)	
<u>X</u>	Non-collusion affidavit (Proposal Form No. 4)	
<u>X</u>	Guarantor Acknowledgement, if applicable (Proposal Form No. 7)	
<u>X</u>	Financial statements	
<u>X</u>	Proposer Information Sheet (Proposal Form No. 8)	
<u>X</u>	Proposed Commencement Date (Proposal Form No. 10)	
<u>X</u>	Proposed Service Fee Escalation Index (Proposal Form No. 9)	
<u>X</u>	Proposal Items Checklist (Proposal Form No. 6)	
<u> </u>	Other	

Print Name of Proposer: _____

Date: _____

Signed By: _____

Print Name & Title: _____

**THIS CHECKLIST SHOULD BE INITIALED AND SIGNED
WHERE INDICATED AND RETURNED WITH ALL ITEMS**

PROPOSAL FORM NO. 7

GUARANTOR ACKNOWLEDGEMENT

(IF APPLICABLE)

GUARANTOR ACKNOWLEDGEMENT
(if applicable)

(to be typed on Guarantor's Letterhead)

_____ (the "Proposer") has submitted herewith a proposal in response to the Tulsa Authority for Recovery of Energy's Request for Proposals for Solid Waste Disposal with Energy and/or Materials Recovery, as amended, issued on [_____] (the "RFP"). The RFP requires the selected proposer to enter into a Service Agreement to provide solid waste disposal with energy and/or materials recovery services and to comply with all applicable permits, licenses, approvals and other Applicable Law, and to perform the other related and ancillary services described in the RFP.

The Guarantor has reviewed the RFP and the proposer's proposal which will together form the basis of the Service Agreement. The Guarantor hereby certifies that subject to review of the final terms and conditions, it intends to unconditionally guarantee the performance of all of the obligations of the proposer set forth in the proposal in the event the proposer is awarded the service agreement.

Name of Guarantor

Name of Authorized Signatory

Signature

Title

Attachment 1 to Proposal Form 7

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ of the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Guarantor Acknowledgement submitted by the corporation in response to the Request for Proposals to perform the Contract Services, as defined in the Request for Proposals issued by the Tulsa Authority for Recovery of Energy on [_____]; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this _____ day of _____, 20__.

(Affix Seal Here)

Clerk/Secretary

* **Note:** Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the proposal.

PROPOSAL FORM 9

PROPOSED SERVICE FEE ESCALATION INDICES

NOTE TO PROPOSERS: TARE RECOGNIZES THAT THE PROPOSERS' COSTS THAT MAKE UP THE PER TON FEE ARE BASED ON DIFFERENT ELEMENTS AND TARE IS GIVING PROPOSERS THE OPPORTUNITY TO HAVE THE APPROPRIATE INDEX APPLY TO THE CORRESPONDING ELEMENT OF THE PER TON FEE.

WHILE THE ESCALATION PROVISION SET FORTH IN SECTION VII OF THE TERM SHEET ALLOWING FOR THE PER TON FEE TO INCREASE IN ACCORDANCE WITH THE ESCALATION INDICES IS INTENDED TO COMPENSATE THE COMPANY FOR INCREASED COSTS THAT MAY OCCUR DURING THE TERM, TARE DOES NOT BELIEVE THAT THE ESCALATION INDICES SHOULD APPLY TO COSTS THAT WILL NOT ESCALATE DURING THE TERM SUCH AS CAPITAL COSTS (i.e., DEBT SERVICE). THEREFORE, PROPOSERS SHALL STATE BELOW WHAT PORTION OF THEIR PER TON FEE WILL BE SUBJECT TO THE ESCALATION INDICES AND WHAT PORTION WILL NOT BE SUBJECT TO THE ESCALATION INDICES.

Portion of Per Ton Fee Subject to Escalation	Portion of Per Ton Fee Not Subject to Escalation
\$ _____	\$ _____

Proposed Escalation Index	Percentage of Per Ton Fee*
	_____ %
	_____ %
	_____ %

*Total of percentages shall not exceed 100%

PROPOSAL FORM 10

SCHEDULED COMMENCEMENT DATE

The earliest date that Proposer will be able to commence the Contract Services shall be _____, _____.

[Note: Date shall not be earlier than June 30, 2022.]

APPENDIX B

NON-DISCRIMINATION LANGUAGE AND ADA PROVISIONS

APPENDIX B

NON-DISCRIMINATION LANGUAGE AND ADA PROVISIONS

During the performance of the Service Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. The Company shall ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, sexual preference, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company, or any person claiming through the Company, shall not establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to the Service Agreement, or in reference to any contractors or subcontractors of the Company.

AMERICANS WITH DISABILITIES ACT

EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

The Contractor and the Owner do hereby agree that the provisions of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. §12101, *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the Owner pursuant to this contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the Contractor shall defend the Owner in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the Owner, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Owner's grievance procedure, the Contractor agrees to abide by any decision of the Owner which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Owner or if the Owner incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the Contractor shall satisfy and discharge the same at its own expense.

The Owner shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Owner or any of its agents, servants, and employees, the Owner shall expeditiously forward or have forwarded to the Contractor every demand, complaint, notice, summons, pleading, or other process received by the Owner or its representatives.

It is expressly agreed and understood that any approval by the Owner of the services provided by the Contractor pursuant to this contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Owner pursuant to this paragraph.

It is further agreed and understood that the Owner assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of the Service Agreement. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Service Agreement, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Owner from taking any actions available to it under any other provisions of the Service Agreement or otherwise at law.

APPENDIX C

SOLID WASTE, GREEN WASTE AND REJECTS VOLUMES

2020-2021

	2020	2021*
January	8,562.95	9,051.65
February	7,464.83	4,061.50
March	9,953.92	9,194.29
April	11,766.97	10,515.99
May	10,706.59	8,691.03
June	10,016.57	10,954.66
July	10,621.36	10,690.61
August	10,137.33	9,763.83
September	10,625.51	9,181.08
October	9,958.08	10,425.86
November	11,101.41	9,370.14
December	10,574.35	6,397.29

*NOTE: With respect to the volume of recycling rejects, the recycling processing facility was down in 2021 for a substantial part of the year due to a fire.

APPENDIX D
TERM SHEET

TERM SHEET

**FOR AGREEMENT FOR DISPOSAL OF SOLID WASTE WITH ENERGY
AND/OR MATERIALS RECOVERY**

between

THE TULSA AUTHORITY FOR RECOVERY OF ENERGY

AND

[_____]

**TERM SHEET
FOR
AGREEMENT FOR DISPOSAL OF SOLID WASTE WITH ENERGY AND/OR
MATERIALS RECOVERY**

This Term Sheet includes a summary of certain of the material provisions anticipated to be included in the final Service Agreement for Disposal of Solid Waste with Energy and/or Materials Recovery to be executed by the Tulsa Authority for Recovery of Energy (“TARE”) and the Proposer selected for negotiations pursuant to this RFP (the “Company”). Appendix A to this Term Sheet contains definitions of certain terms used but not defined herein.

I. SCOPE

The Company shall receive all Acceptable Waste delivered by or on behalf of TARE (including rejects from TARE’s recycling contractor) (“TARE Acceptable Waste”) to the Company’s resource recovery facility (the “Facility”) and shall operate and manage the Facility to process and dispose of such waste (the “Contract Services”) in accordance with the Contract Standards.

II. TERM

The Company shall provide the Contract Services for a period of 15 years (the “Initial Term”). The Service Agreement may be extended for an additional 5-year period upon the mutual consent of the parties (such 5-year period constituting the “Renewal Term” and, together with the Initial Term, the “Term”).

**III. ACCEPTANCE AND
PROCESSING
REQUIREMENTS**

• **Generally,**

In accordance with the Contract Standards including all Applicable Law, the Company shall accept and process all TARE Acceptable Waste subject to the Diversion Allowance described below.

• **Receiving Hours**

The Company shall be open to accept Acceptable Waste from 5:00 a.m. to 6:00 p.m. on Mondays through Saturdays, except the Company shall not be required to accept Acceptable Waste on the following holidays: Christmas, Thanksgiving, New Year’s. In addition, the Company shall be open to accept Acceptable Waste during days and hours of emergency conditions, as necessary and shall upon request by TARE, extend hours to 8:00 p.m., for a maximum of twenty (20) days per year.

• **Company Performance
Guarantees**

- **Performance
Guarantee**

The Company shall comply with performance guarantees to be agreed upon by the parties. Such guarantees will be dependent upon the nature of the technology utilized by the Company but it

is anticipated that they will address availability of the energy and/or /materials recovery technology at minimum, recovery/conversion performance levels, and the requirement to comply with all Applicable Law including permit conditions, among other requirements, the specifics of which will be agreed upon by the parties based upon the proposal.

- **Diversion Allowance** The Company may divert a maximum of five percent (5%) per Contract Year of the total combined tonnage of TARE Acceptable Waste available for delivery to the Facility due only to equipment malfunction or maintenance downtime (the “Diversion Allowance”). Diversion of more than five percent (5%) of TARE Acceptable Waste shall result in the payment of Diversion Damages payable to TARE in the amount of \$25 per Ton diverted above the Diversion Allowance.

- **Capacity Guarantee** The Facility must be able to handle a minimum of 100,000 TPY which volume includes all waste delivered by or on behalf of TARE. The Company shall expand the Facility to accommodate TARE’s volume, if necessary, at no extra cost to TARE.

- **Energy and/or Materials Recovery Guarantee** The Company shall document the quantity of energy converted from TARE Acceptable Waste and materials recovered from TARE Acceptable Waste. Depending upon the nature of the Facility, the Company will be required to meet performance guarantees to be agreed upon by the parties.

- **Truck Turnaround Guarantee** All vehicles delivering TARE Acceptable Waste shall be given priority and shall have a maximum turnaround time of 30 minutes. In the event that the Company fails to meet the 30-minute maximum turnaround time as set forth above, it shall be subject to the following sanctions: (i) turnaround times between 31 to 45 minutes will be sanctioned at \$50 per load; (ii) turnaround times between 46 to 60 minutes will be sanctioned at \$100 per load; (iii) turnaround times between 61 to 75 minutes will be sanctioned at \$150 per load; and (iv) turnaround times that exceed 75 minutes will be sanctioned at \$500 per load.

- **Capability to Accept Any Type of Delivery Vehicle** The Facility must at all times be capable of accepting Acceptable Waste from all types of delivery vehicles including, but not limited to, packer trucks, roll-off trucks, and rear-discharging tilt-bed and side-discharging tilt-bed collection vehicles that normally deliver such materials. The Company shall construct, maintain, and operate the Facility to ensure the doors on delivery bays shall be of sufficient height and width to allow the exit of roll-off trucks and collection vehicles with bodies or containers in the dump (up) position.

- **No Nuisance** The Company shall not create an odor, noise, vector, litter or any other nuisance condition. Upon any failure of the Company to

comply with this requirement, the Company shall promptly make all operational and capital modifications necessary to achieve compliance. In addition, the Company shall comply with all applicable ODEQ requirements.

- **Administrative Charges and Performance Damages** The failure of the Company to meet specified performance guarantees and administrative requirements as set forth in Appendix D shall result in the Company being responsible for the payment of administrative charges and performance damages in accordance with Appendix D.
- **Ash / Residue** The Company shall use its best efforts to beneficially reuse ash and/or residue in accordance with Applicable Law at its cost. Ash or other residues shall not be disposed of at a landfill (except for use as daily cover) unless the Company demonstrates that such ash or residue could not be beneficially used despite its best efforts.
- **Most Favored Nations / Price Guarantee Provision** If during the Term, the Company enters into or amends a disposal contract with another municipal customer providing each of the following (a "Qualifying Contract"): (i) an initial term in excess of one year, (ii) uninterruptible service, and (iii) a disposal rate for Solid Waste delivered to the Facility by the municipal customer or otherwise at the municipal customer's expense which is lower than the applicable disposal rate for Authority Acceptable Waste, then the Authority's applicable disposal rate shall be reduced to the applicable disposal rate for Solid Waste delivered to the Facility in the Qualifying Contract for the number of tons for which such other municipal customer pays such lower rate for the remainder of the Term.

IV. OPERATIONS REQUIREMENTS

- **Generally** The Company shall operate the Facility in accordance with the Contract Standards.
- **On-Site Manager** The Company shall have a full-time operations manager, chief engineer or shift supervisor physically on-site at the Facility at least 6 days a week. Such individual shall be capable of making plant decisions.
- **Permits** The Company shall be responsible for obtaining, maintaining, modifying and renewing all permits, licenses and approvals (and paying all permitting fees) required for operating and maintaining the Facility.
- **Compliance with Applicable Law** The Company shall comply with all requirements of Applicable Law including all permit conditions and shall promptly pay all fines and costs associated with the Company's failure to comply

with Applicable Law, and shall promptly make all operational and capital modifications necessary to achieve compliance.

- **Safety Procedures**

The Company shall establish and maintain safety procedures for the Facility at a level consistent with Applicable Law and Good Industry Practice.

V. MAINTENANCE REQUIREMENTS

- **Generally**

The Company shall maintain the Facility in accordance with the Contract Standards including the Major Maintenance Repair and Replacement Plan.

- **Major Maintenance, Repair and Replacement Plan**

The Company shall prepare and deliver to TARE a Major Maintenance, Repair and Replacement Plan that identifies all major maintenance, repair and replacement activities anticipated to be performed at the Facility. Such Major Maintenance, Repair and Replacement Plan shall be updated by November 1st of each year.

- **Truck Scales**

The Company shall at all times operate, maintain and sufficiently staff adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming and outgoing delivery vehicles. At a minimum, the Company shall calibrate scales every six (6) months or as required by Applicable Law, whichever is more frequent.

- **Computerized Maintenance and Management System (CMMS)**

TARE shall have read-only access to the Company's CMMS data.

- **Inspection of Facility**

TARE shall have access, upon twenty-four (24) hours advance written notification to inspect the Company's facilities and equipment as TARE deems reasonably necessary to confirm that major maintenance, repair and replacement is not being deferred.

VI. RIGHTS OF TARE

- **Visitation**

TARE shall have the right to have its representative present at the Facility and scale house during all hours of operation to observe and monitor the Company's compliance with the provisions of the Service Agreement.

- **Inspection of Books and Records**

TARE shall have access, including access by the Company's on-site computer, within twenty-four (24) hours of advance written notification, to all books, records, data and documents of the Company, including monthly performance, operation and outage reports related to the services provided under the Service

Agreement for inspection, and audit, at TARE's own expense. The Company shall electronically transmit scale tonnage documentation for TARE activity each night to the TARE administrator.

- **Right to Audit**

The Company's books, records, documents, accounting procedures, practices, price lists or any other items related to the services or terms of the Service Agreement are subject to inspection, examination, and copying by TARE or its designees. The Company is required to retain all records related to the Service Agreement for the duration of the term of the Service Agreement and a period of five (5) years following expiration and/or termination of the Service Agreement.

VII. TARE OBLIGATIONS

- **Delivery Commitment**

TARE or its designee shall deliver to the Company's Facility all TARE Acceptable Waste.

- **Payment Obligations**

TARE shall pay the Company a monthly fee ("Service Fee") equal to (1) the sum of (i) the agreed upon per ton fee (to be based upon the fee proposed on Proposal Form 2) (the "Per Ton Fee"), plus (ii) the applicable ODEQ per ton disposal fee, times (2) the number of Tons of TARE Acceptable Waste received and processed in the previous month, minus any amount TARE has the right to set-off pursuant to the Service Agreement.

- **Invoices**

The Company shall invoice TARE for Service Fees on a monthly basis, on or after the first day of the succeeding month. Each invoice shall break out the amount of the ODEQ disposal fee. TARE's payments shall be due and payable within thirty (30) days of receipt of the invoice.

- **Annual Adjustment of Per Ton Fee**

The Per Ton Fee shall be adjusted annually in accordance with **[NOTE TO PROPOSERS: PROPOSED ESCALATION INDICES TO BE PROPOSED ON PROPOSAL FORM 9]**. In no event shall the overall escalation rate in any year exceed 5%.

- **Right of Set-Off**

TARE shall have the right to set-off any performance damages or other amounts owed to TARE from Service Fees payable by TARE.

VIII. EVENTS OF DEFAULT, TERMINATION RIGHTS AND REMEDIES

- Company
- Default:

Without Opportunity to Cure:

Each of the following shall constitute an Event of Default by the Company upon which TARE may declare the Service Agreement

terminated without opportunity for cure:

- Repeated failure to perform a material obligation unless excused by an Uncontrollable Circumstance;
- Failure to obtain and maintain any required security instrument;
- Failure or refusal to pay any amount required to be paid to TARE within 60 days following the due date;
- Insolvency, voluntary bankruptcy or involuntary bankruptcy;
- Assignment of the Service Agreement except as prescribed in the Service Agreement.

With Opportunity to Cure:

The following, after notice and a 60 day opportunity to cure, shall constitute an Event of Default upon which TARE may declare the Service Agreement terminated:

- Failure or refusal to perform any material obligation under the Service Agreement not otherwise addressed above (unless excused by an Uncontrollable Circumstance).

• TARE Default:

Without Opportunity to Cure:

Each of the following shall constitute an Event of Default by TARE upon which the Company may terminate the Service Agreement without opportunity to cure:

- Repeated failure to perform a material obligation unless excused by an Uncontrollable Circumstance.
- Insolvency, voluntary bankruptcy or involuntary bankruptcy.

With Opportunity to Cure:

Each of the following, after notice and a 60 day opportunity to cure, shall constitute an Event of Default by TARE upon which the Company may terminate the Service Agreement:

- Failure or refusal to pay an undisputed amount required to be paid to the Company within 60 days following the due date.
- Failure to perform any other material obligation under the Service Agreement not otherwise addressed above (unless excused by Company fault or Uncontrollable Circumstance), after a 60 day

opportunity to cure.

• Termination by
Law:

If this Agreement is terminated as a result of a successful procurement law challenge, each party shall bear its own costs and neither party shall have any rights or remedy with respect to the other party.

IX. DISPUTE RESOLUTION

• Forum for
Dispute Resolution:

All Legal Proceedings related to the Service Agreement or to any rights between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts located in Tulsa County, Oklahoma.

• Governing Law:

The validity, construction and effect of the Service Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Oklahoma. Oklahoma law shall govern regardless of any language in any attachment or other document that the Company may provide.

• Non-Binding
Mediation:

Either party may request Non-Binding Mediation of any dispute arising under the Service Agreement prior to the initiation of any civil action. The non-requesting party may decline such a request in its sole discretion.

X. UNCONTROLLABLE CIRCUMSTANCES

Except as expressly provided under the terms of the Service Agreement, neither party to the Service Agreement will be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it is caused by one or more Uncontrollable Circumstances. The non-performing party shall diligently attempt to mitigate any such circumstance and shall promptly notify the other party of the extent and anticipated duration of the Uncontrollable Circumstance event.

Uncontrollable Circumstance means any act, event or condition that is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of the party, and that materially adversely interferes with or delays the performance of the party's obligations under the Service Agreement.

Uncontrollable Circumstances may include:

- Changes in Law
- Force majeure events
- Other acts, events or circumstances beyond the reasonable control of the affected party

Uncontrollable Circumstances shall not include:

- Market risk
- Interest rate and all other financing risks
- Company strikes
- Subsurface conditions
- Failure to secure patents
- Under-estimating costs
- Nonexistence of environmental credits, incentives or benefits or markets for such credits, incentives or benefits
- Commodity pricing fluctuation
- Matters resulting directly or indirectly from the Company's failure to observe or comply with Applicable Law, Good Industry Practice, or Good Engineering and Construction Practice
- Matters resulting directly or indirectly from the Company's negligence in the performance of its duties or obligations

The Company shall be entitled to appropriate schedule and performance relief (not price relief), as applicable, in the event of the occurrence of an Uncontrollable Circumstance in accordance with the terms and conditions to be set forth in the Service Agreement.

XI. INDEMNIFICATION BY THE COMPANY

The Company shall indemnify, defend and hold harmless TARE from, and pay the full amount of, any loss-and-expense (including, without limitation, damages, fines, penalties and attorneys' fees) arising from: (i) any failure by the Company to perform its obligations under the Service Agreement; or (ii) the negligence or willful misconduct of the Company or any of its employees or subcontractors.

The Company shall acknowledge that TARE is a Title 60 public trust created under the law of the State. Accordingly, and pursuant to Oklahoma law, neither TARE nor the City will indemnify nor hold the Company harmless for loss, damage, expense or liability arising from or related to the Service Agreement, including any attorneys' fees and costs.

XII. SECURITY REQUIREMENTS

- **Security for Performance** At all times during the Term, the Company shall obtain and maintain a Performance Bond in the amount of \$1,000,000 in the form attached hereto.
- **Required Insurance** At all times during the Term, the Company shall obtain and maintain Required Insurance. Required Insurance shall include those coverages set forth in Appendix B hereto.

Neither TARE nor City shall be required to carry insurance covering the Company.

XIII. ACTIONS OF THE AUTHORITY IN ITS GOVERNMENTAL CAPACITY, AND RESERVATION OF RIGHTS

Nothing in the Service Agreement shall be interpreted as limiting the rights and obligations of TARE under Applicable Law in its governmental or regulatory capacity (including police power actions to protect health, safety and welfare or to protect the environment).

XIV. SUBCONTRACTORS

The Company may not subcontract the operations and management of the Facility without TARE's prior written consent.

XV. ASSIGNMENT

Neither party can assign its rights and interests in the Contract without the prior written consent of the other party.

XVI. AMENDMENT

The Contract may be amended only by mutual consent in writing.

XVII. TAXES

TARE shall not be responsible for the payment of sales or excise taxes.

XVIII. ADDITIONAL TERMS APPLICABLE IF NEW FACILITY TO BE DEVELOPED

Appendix C contains additional provisions that will only be applicable in the event the Company develops a new recovery facility.

APPENDIX A
DEFINITIONS

“Acceptable Waste” means Solid Waste which is not Unacceptable Waste.

“Applicable Law” means any law, rule, regulation, requirement, guideline having the force of law, permit, Governmental Approval ordinance, building or fire code, or order, of any federal, state or local agency, court or other governmental body having jurisdiction, applicable from time to time to the design, acquisition, construction, equipping, financing, permitting, ownership, possession, shakedown, testing or operation of the Solid Waste System, the transporting, receipt and processing of Solid Waste or any other transaction or matter contemplated in the Service Agreement. As to TARE, Applicable Law shall also include the Trust Indenture and all amendments thereto by which it is organized and conducts its affairs.

“City” means the City of Tulsa, Oklahoma.

“Commencement Date” means the first date on which all of the Development Period responsibilities of the Company shall be satisfied or waived, as agreed to in writing by the parties.

“Contract Date” means the date the Service Agreement is executed and delivered by the parties.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) Good Engineering and Construction Practice; (3) Good Industry Practice; (4) applicable operation and maintenance manuals; (5) applicable equipment manufacturers’ specifications; (6) applicable Insurance Requirements; and (7) any other standard, term, condition or requirement specifically provided in the Service Agreement to be observed by the Company.

“Development Period” means the time period after the Contract Date and prior to the Commencement Date.

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design,

construction and improvement of capital assets in the municipal solid waste processing and resource recovery industry in the United States and taking into consideration good design, engineering, equipping, installation, construction and commissioning practices for industrial facilities as observed in the South-Central United States. Good Engineering and Construction Practice is not in all cases limited to a single optimum method, technique, standard and practice to the exclusion of all other generally recognized as good methods, techniques, standards and practices for such facilities observed in such region.

“Good Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal solid waste processing and resource recovery industry in the United States and taking into consideration good operation, maintenance, repair, replacement, and management practices for industrial facilities as observed in the South-Central United States. Good Industry Practice is not in all cases limited to a single optimum method, technique, standard and practice to the exclusion of all other generally recognized as good methods, techniques, standards and practices for such industries observed in such region.

“Major Maintenance, Repair and Replacement Plan” means the plan to be delivered by the Company to TARE that identifies all major maintenance, repair and replacement activities (i.e., activities that exceed \$50,000) anticipated to be performed at the Facility on a year by year basis.

“Required Insurance” means the insurance specified in Appendix B.

“Service Agreement” means the Service Agreement to be executed between TARE and the Company for the provision of solid waste disposal with energy and/or material recovery services.

“Solid Waste” means all putrescible and nonputrescible refuse in solid, semisolid, or liquid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, construction and demolition waste, solid or semisolid commercial and industrial wastes including explosives, biomedical wastes, chemical wastes, herbicide and pesticide wastes. The term "solid waste" shall not include:

(A) Scrap materials which are source separated for collection and processing as industrial raw materials, except when contained in the waste collected by or in behalf of a solid waste management system, or

(B) Used motor oil, which shall not be considered to be a solid waste, but shall be considered a deleterious substance, if the used motor oil is recycled for energy reclamation and is ultimately destroyed when recycled.

“TARE” means the Tulsa Authority for Recovery of Energy.

“TARE Acceptable Waste” means residentially generated Solid Waste and curbside green waste, and rejects generated pursuant to any recycling agreement that TARE may have for recycling services during the Term, collected by or on behalf of TARE.

“Ton” means a short ton of 2,000 lbs.

“Unacceptable Waste” means Hazardous Waste; poisons; acids; caustics; explosives; body wastes; automobile frames; and materials which may cause damage to collection equipment or personal injury to collectors; refuse which has been combined or mixed with any of the above-mentioned items; and any materials which cannot be processed at the Facility, which can cause the Facility operations problems, or which would have a reasonable possibility of causing injury to health, safety, or property. **[NOTE TO PROPOSERS: Proposers must identify any items they will not be able to accept and process pursuant to Proposer’s ODEQ permit.]**

Any “Year” shall commence as of July 1st and end June 30th, consistent with TARE’s fiscal year.

APPENDIX B
INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

- (a) Worker's Compensation Insurance - on behalf of itself, its partners, and all employees employed directly or indirectly by Company who are to provide a service under this Agreement of limits no less than as required law.
- (b) Employer's Liability \$1,000,000.
- (c) Bodily Injury (except Automobile) \$300,000 per person. (Commercial General Liability to cover amounts for Bodily Injury up to this amount)
- (d) Automobile Bodily Injury Liability \$300,000 each person, \$1,000,000 each occurrence.
- (e) Automobile Property Damage Liability \$300,000 each occurrence.
- (f) Excess Umbrella Liability \$15,000,000 each occurrence.
- (g) Commercial General Liability \$5,000,000 each occurrence, \$10,000,000 aggregate.
- (h) Environmental Pollution Liability \$15,000,000 each claim, \$15,000,000 aggregate.

The policies of insurance shall be primary and written on forms acceptable to TARE and placed with insurance carriers approved and licensed by the State and meet a minimum financial A.M. Best & Company rating of no less than "Excellent": VII. Certificate(s) of insurance for each policy required in the Service Agreement shall be submitted with each invoice submitted by Company. Each certificate must reflect that the policies have not been terminated, cancelled, changed or reduced in coverage.

General Requirements

The Company's and its subcontractors' insurers must be authorized to transact business in the State. All policies required herein are to be written on an occurrence basis except Environmental Pollution Liability, and the insurers shall agree to waive all right of subrogation against TARE and the City. Additionally, all policies other than Worker's Compensation policies shall name TARE and the City as additional insureds. Company shall ensure that the insurance coverage required under this Agreement is obtained and maintained by Company or its subcontractors for its subcontractors to cover their action or inactions.

APPENDIX C

ADDITIONAL PROVISIONS APPLICABLE IF NEW FACILITY TO BE DEVELOPED

- Site
The Company shall be solely responsible for acquiring and providing the site for the development of the new Facility.
- Permitting
The Company shall be solely responsible for obtaining all permits, to the extent necessary to design, build and operate the new Facility.
- Financing
The Company shall be solely responsible for financing the acquisition, design, development and construction of the new Facility.
- Design and Construction
The Company shall have the sole responsibility for the design, development and construction of the new Facility.
- Commencement Date:
The Company shall commence services within [___] days of the effective date of the Contract (the “Scheduled Commencement Date”). **[NOTE TO PROPOSERS: Scheduled Commencement Date to be Proposed on Proposal Form 10.]**

Failure of the Company to complete its development period responsibilities and to begin performance by the Scheduled Commencement Date shall result in the Company paying delay damages.
- Right to Terminate:
Failure of the Company to commence Contract Services within 90 days of the Scheduled Commencement Date shall constitute an Event of Default and TARE may terminate the Service Agreement.
- Compensation:
The Company shall not be paid prior to the commencement of Contract Services.

APPENDIX D

ADMINISTRATIVE CHARGES AND PERFORMANCE DAMAGES

- (a) Failure to commence accepting and processing materials pursuant to the Service Agreement by **[Date proposed on Proposal Form 10]**: The amount of all costs incurred by TARE and City including but not limited to transporting, tipping, storing, processing materials in an alternate location
- (b) Failure to deliver reports as required: \$100 per day
- (c) Failure to maintain records in accordance with recordkeeping procedures: \$100 per day
- (d) Failure to accept materials pursuant to the Service Agreement during Hours of Operation: \$100 per hour
- (e) Failure to weigh and record incoming vehicle: \$100 per occurrence
- (f) Failure to achieve truck turn-around time in accordance with Agreement **[Note: See Truck Turnaround Guarantee section.]**
- (g) Failure to maintain scale house in accordance with Agreement: \$250 per day
- (h) Failure to provide priority access in accordance with Agreement: \$100 per occurrence
- (i) Failure to achieve processing requirements: \$500 per day
- (j) Failure to have twenty-four (24) hour access to Company Representative: \$100 per occurrence
- (k) Failure to adhere to litter and odor requirement as set forth in Agreement: \$250 each incident
- (l) Failure to accept materials in excess of the authorized diversion allowance: For each ton in excess of the authorized diversion allowance, \$25 per ton
- (m) Failure to be able to accept materials on any day after the Commencement Date or any day thereafter: \$3,000 each day.

APPENDIX E
FORM OF PERFORMANCE BOND

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address);

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Contract Date):

Amount: \$1,000,000

Modifications to this Bond Form:

Surety and CONTRACTOR, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance to be duly executed on its behalf by its authorized officer, agent or representative.

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required)

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

EJCDC No. 1910-25-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract; or

3.3.2. Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, in its sole discretion, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain proposals or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price

incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1. After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2. Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. Surety's failure or inability to proceed as provided in paragraph 4 due to actions by or against CONTRACTOR shall not excuse Surety's performance hereunder. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here-from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1. Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The Service Agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived to perform or otherwise comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY– Name, Address and Telephone)
AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or
other party):