



City Clerk Document No. _____

City Council Meeting Date: January 27, 2022

**CITY OF CHANDLER SERVICES AGREEMENT
PROCESSING AND MARKETING OF RECYCLABLE MATERIALS
CITY OF CHANDLER AGREEMENT NO. SW1-926-4307**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and River Recycling, LLC, a Delaware corporation (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties) and made _____, 2022 (Effective Date).

RECITALS

A. City proposes to engage a Contractor to provide processing and marketing services for recyclable materials as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.

B. Contractor is ready, willing, and able to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.

C. City desires to contract with the Contractor to provide these services under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

SECTION I: DEFINITIONS

For purposes of this Agreement, the following definitions apply:

Agreement means the legal agreement executed between the City and the Contractor

City means the City of Chandler, Arizona

Contractor means the individual, partnership, or corporation named in the Agreement

Days means calendar days

May, Should means something that is not mandatory but permissible

Shall, Will, Must means a mandatory requirement

SECTION II: CONTRACTOR'S SERVICES

Contractor must perform the services described in Exhibit A to the City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides

similar services in Chandler, Arizona exercises under similar conditions. All work or services furnished by Contractor under this Agreement must be performed in a skilled and workmanlike manner. Unless authorized by the City in writing, all fixtures, furnishings, and equipment furnished by Contractor as part of the work or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the work or service.

SECTION III: PERIOD OF SERVICE

Contractor must perform the services described in Exhibit A for the term of this Agreement. Following execution of this Agreement by City, the Contractor will immediately commence the work required to prepare its transfer facility to accept materials collected by the City. The transfer facility will begin accepting City materials within ten months of the execution date of this Agreement. The City agrees to support and aid Contractor, when possible, with obtaining the appropriate permits from Maricopa County to allow for the expansion of the transfer facility. The Contractor will commence performing the Scope of Services on the date materials begin to be accepted at the transfer facility. The term of the Agreement will begin on that date and remain in effect until September 30, 2027, unless sooner terminated in accordance with the provisions of this Agreement. The City and the Contractor may mutually agree to extend the Agreement for up to one additional term of three years, or a portion thereof. The City reserves the right, at its sole discretion, to extend the Agreement for up to 60 days beyond the expiration of any extension term.

SECTION IV: PAYMENT OF COMPENSATION AND FEES

The Contractor shall submit a statement of fees and revenues on or before the 20th of each month for the previous month. The statement shall be itemized and include:

- a. Total tons received
- b. Tons by commodity
- c. Total processing fee
- d. Revenue by commodity
- e. Revenue due to, or cost due from, the City
- f. Recycling Education Fee due to City (if applicable)

The Contractor shall remit revenue due to the City on or before the 20th of each month for the previous month. Documentation of commodity sales prices that support the statement of fees and revenues will be included with the itemized statement. The Contractor bears all responsibility and liability for any and all tax obligations that result from Contractor's performance under this Agreement.

On the anniversary of the first day the Contractor accepts City material at its facility, and on every anniversary date of the execution of this Agreement thereafter for the life of this Agreement, the Processing Fee will be adjusted according to this section. The annual adjustment shall be based on the Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services ("CPI"), as published by the Bureau of Labor Statistics for the execution anniversary month of the calendar year compared to execution anniversary month of the prior calendar year. The Processing Fee adjustment shall not increase more than three percent (3%) per twelve (12) months.

SECTION V: GENERAL CONDITIONS

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses

pertaining to this Agreement and records of accounts between the City and Contractor must be kept based on generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor will include a similar provision in all its contracts with subcontractors providing services under the Agreement Documents to ensure that the City, its authorized representative, or the appropriate federal agency, has access to the subcontractors' records to verify the accuracy of all cost and pricing data. The City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from the Contractor following final payment on this Agreement if the above provision is not included in subcontractor agreements, and one or more subcontractors refuse to allow the City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

5.2 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or project schedule, the work will be performed as directed by the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra work done, or materials furnished by the Contractor, will be allowed by the City except as provided herein, nor must the Contractor do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause but not before providing ninety (90) days' advance written notice, to terminate or abandon this Agreement, or any portion thereof. In the event the City abandons, or suspends the services, or any part of the services as provided in this Agreement, the City will notify the Contractor in writing and immediately after receiving such notice, the Contractor must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the work Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's work to appraise the work completed. The Contractor will receive

compensation in full for services performed to the date of such termination. The fee shall be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the City. If there is no mutual agreement on payment, the final determination will be made in accordance with the Disputes provision in this Agreement. However, in no event may the payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment. If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.4 Termination for Cause. Either the City or Contractor may terminate this Agreement for cause if the other party is in material breach of the Agreement. To terminate this Agreement for cause for material breach, a Party must give the other Party written notice of the event triggering the Party's intent to terminate for cause and allow the other Party thirty (30) days (or if the event is such that it cannot reasonably be cured within thirty (30) days, the Party shall have a reasonable time to cure provided that the Party proceeds in good faith and with due diligence) to cure prior to terminating the Agreement for cause. In addition, the City may terminate this Agreement for cause, pursuant to the above notice requirements, upon the occurrence of any one or more of the following events: (a) the Contractor is adjudged bankrupt or insolvent, (b) the Contractor makes a general assignment for the benefit of creditors, (c) a trustee or receiver is appointed for Contractor or for any of Contractor's property, (d) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or (e) the Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction. Where the Agreement has been terminated for cause by a party, the termination will not affect any rights of the non-breaching party then existing or which may thereafter accrue.

5.5 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnitee) from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) (Claims) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense, and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.6 Rejection of Certain Material.

- a. Contractor shall have the right to reject (1) delivery of a load weighing more than eight (8) tons reflecting over-compaction; or (2) any load containing regulated waste such as Special Waste or Hazardous Waste (as defined in Exhibit A); or (3) delivery of a load that contains, in Contractor's reasonable judgment, more than fifty percent (50%) contamination.

- b. If Contractor identifies a load meeting the criteria of 5.6(a)(3) that has been tipped within the transfer facility, Contractor shall isolate the load and provide the City with photographs of the load, information identifying the truck delivering the load, and the approximate percentage of contamination in the load. City personnel shall have the right to inspect the load within twenty-four (24) hours of notification of the contaminated load. City and Contractor shall mutually agree on the percentage of contamination. Contractor shall not remit a revenue share to the City for rejected material under this Section 5.6
- c. If Contractor identifies a load that satisfies the criteria of Section 5.6(a)(1) or (2), Contractor may, in its sole discretion: (1) reject such material and dispose of material at Contractor's own expense, or (2), after giving the City telephonic notice and an opportunity to dispose of such material as provided in this Agreement, the Contractor may, as the City's agent, dispose of such material at a location authorized to accept such material in accordance with all applicable laws and charge the City the direct costs that Contractor incurs as a result of Contractor's handling, delivery, and disposal of such material. If the City elects to dispose of such material, City shall do so within two business days after City's receipt of notice from Contractor. If the City elects not to dispose of the material or the City does not dispose of material within two business days after notice from Contractor, the Contractor may dispose of such material as the City's agent, without further notice to the City, and the City shall pay Contractor's direct costs to dispose of such material. Notwithstanding the foregoing, Contractor is not required to provide prior notice to the City to dispose of material as the City's agent under conditions where in the Contractor's reasonable judgment a delay in such disposal constitutes an emergency that would likely cause immediate physical harm or injury to the Facility or persons located on Facility premises. Provided, however, Contractor must provide written notice to City as provided in this Agreement within two business days after Contractor disposes of material under these emergency conditions.

5.7 Insurance Requirements. Contractor must procure insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit C against claims that may arise from or relate to performance of the work under this Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must maintain this insurance until all their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.8 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.9 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

For the City

Name: Christina Pryor
 Title: Purchasing Manager
 Address: 175 S. Arizona Ave., 3rd Floor
 Chandler, AZ 85225
 Phone: 480-782-2403
 Email: christina.pryor@chandleraz.gov

With a Copy to:
 Solid Waste Services Division
 480-782-3515
 solidwaste.customerservice@chandleraz.gov

For the Contractor

Name: Stephen Herring
 Title: Municipal Relationship Manager
 Address: 13602 N. Beeline Highway
 Scottsdale, AZ 85256
 Phone: 602-931-9416
 Email: sherring@republicservices.com

With a Copy to:
 Republic Services
 Office of Chief Legal Officer
 18500 N. Allied Way
 Phoenix, Arizona 85054

5.10 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor the Contractor may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and the City.

5.11 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager. If either Party disputes the final determination made at the administrative level, that Party may pursue litigation in a court of competent jurisdiction. In the event of any litigation, the non-prevailing party shall reimburse the prevailing party for its reasonable attorneys' fees and costs incurred in enforcing its rights under this Agreement.

5.12 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.13 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor until such time that a settlement on those claims has been reached.

5.14 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.15 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control

over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.16 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must advise the City of the key personnel that will be involved in performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for prior approval. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City.

5.17 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the City's written prior approval.

5.18 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.19 Compliance with Laws. Contractor understands, acknowledges, and agrees to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. All services performed by Contractor must also comply with all applicable City of Chandler codes, ordinances, and requirements. Contractor agrees to permit the City to verify Contractor's compliance.

5.20 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.21 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Contractor's or subcontractor's employee who provides services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.22 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying Identification

and sign a City-provided affidavit affirming that the Identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.23 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.24 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each provision.

5.25 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the services performed by the Contractor under this Agreement are not expected to create an interest with any person, entity, or third-party project that is or may be adverse to the City's Interests. Contractor's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.26 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to

the following data provided to the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy because of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents, or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice. Notwithstanding the foregoing, any material provided to Contractor for processing will not be considered confidential data or information as set forth in this Section.

5.27 Personal Identifying Information-Data Security. Personal Identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. If data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered by Contractor. It is further agreed that a violation of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.28 Jurisdiction and Venue. This Agreement is made under and must be construed in

accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.29 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.30 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.31 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.32 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.33 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.34 Date of Performance. If the date of performance of any obligation or the last day of any time provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.35 Title to Waste. Except as provided in this Section, the City shall own and hold title to all solid waste and recyclable materials delivered by the City or the City's subcontractor to the Contractor. Title to, and risk of loss and responsibility for, materials delivered to the Contractor by the City or the City's subcontractors shall pass at the time such materials are removed from the delivery vehicle at the Facility. Except as provided for in this Agreement, the Contractor shall have no right to take, keep, process, alter, remove, or dispose of any such material without the City's prior authorization. Title to Special Waste or Hazardous Waste, as defined in Exhibit A, shall remain with the generator.

5.36 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and the Contractor and not for the benefit of any other party.

5.37 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in

interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.38 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be always kept secure. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.39 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

- Exhibit A - Project Description/Scope of Services
- Exhibit B - Compensation and Fees
- Exhibit C - Insurance Requirements
- Exhibit D - Special Conditions

5.40 Special Conditions. As part of the services Contractor provides under this Agreement, Contractor agrees to comply with and fully perform the special terms and conditions set forth in Exhibit D, which is attached to and made a part of this Agreement.

5.41 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity. If required to provide services on a school district property at least five times during a month, the Contractor will submit a full set of fingerprints to the school of each person or employee who may provide such service. The District will conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor will comply with the governing body fingerprinting policies of each individual school district/public entity. The Contractor, sub-contractors, vendors and their employees will not provide services on school district properties until authorized by the District. Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City will not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

5.42 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and regulations.

5.43 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.44 Warranties. Contractor must furnish a one-year warranty on all work and services.

performed under this Agreement. Contractor must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Contractor, subcontractors, or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Contractor (including, but not limited to, all parts and labor) at Contractor's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to the City on or before the City's final acceptance of Contractor's services under this Agreement.

5.45 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.46 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.47 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as expenditure. The City does not represent that this budget item will be adopted. This determination is solely made by the City Council at the time Council adopts the budget.

Remainder of page left blank intentionally

This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

FOR THE CITY

FOR THE CONTRACTOR

By: _____

By: Janara Pernilliat

Its: Mayor

Its: Vice President

APPROVED AS TO FORM:

By: _____
City Attorney 

ATTEST:

By: _____
City Clerk

EXHIBIT A TO AGREEMENT SCOPE OF SERVICES

Definitions

As used in this Scope of Work, the following definitions shall apply:

- a. Container. "Container" means a City issued container used to place refuse, recyclables, as applicable, for collection.
- b. Contamination. "Contamination" means material collected by collection vehicles that is not defined as Acceptable Materials in the Agreement. Contamination includes trash, as well as Recyclables that become contaminated and must be disposed of as solid waste.
- c. Fines and Fluff. "Fines and fluff" mean that material typically counted towards the trash figure in the hand classification sort except for glass that is collected after passing through the screens on sorting equipment. Fines and fluff are also referred to as "Residual".
- d. Hazardous Waste. Any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and any other Applicable Law.
- e. Recyclables. "Recyclables" means materials meeting the qualitative criteria established by City for recycling that are placed in recycle containers for collection.
- f. Unacceptable Materials. Contractor may modify the following list of Unacceptable Materials in its sole discretion but will provide City with at least thirty (30) days' prior written notice of any such modifications. "Unacceptable Materials" includes the following:
 - Yard Waste
 - Styrofoam
 - Pizza Boxes, unless free of any food or grease residue
 - Food, including Condiment, To-Go Containers and aluminum foil with food contamination
 - Diapers
 - Clothing/textiles
 - Plastic Bags or bagged material (newsprint may be placed in a Kraft bag)
 - Mirrors, window or auto glass, light bulbs, ceramics, car batteries
 - Oil or antifreeze containers
 - Coat hangers
 - Paint cans
 - Medical Waste/Sharps
 - Latex gloves and N95 masks
 - Household items (such as appliances, toasters, cooking pots or pans, water hoses, etc.)
 - Hard cover books
 - Any other item that the sorting equipment will reject or is not expressly included as an Acceptable Material
- g. Special Waste. Any nonhazardous solid waste which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment. Special Waste includes, but is not limited to (a) waste generated by an industrial process or a pollution control process; (b) waste which may contain residue and debris from the cleanup of spilled petroleum, chemical or commercial products or wastes, or contaminated residuals; (c) waste which is nonhazardous as a result of proper treatment pursuant to Subtitle

C of the Resource Conservation and Recovery Act of 1976 ("RCRA"); (d) waste from the cleanup of a facility which generates, stores, treats, recycles or disposes of chemical substances, commercial products or wastes; (e) waste which may contain free liquids and requires liquid waste solidification; (f) containers that once contained hazardous substances, chemicals, or insecticides so long as such containers are "empty" as defined by RCRA; (g) asbestos containing or asbestos bearing material that has been properly secured under existing Applicable Law; (h) waste containing regulated polychlorinated biphenyls (PCBs) as defined in the Toxic Substances Control Act (TSCA); (i) waste containing naturally occurring radioactive material (NORM) and/or technologically-enhanced NORM (TENORM); and (j) Municipal Solid Waste that may have come into contact with any of the foregoing.

Transfer Facility/Material Recovery Facility

- a. The Contractor's designated facility to receive the City's materials is Republic Services' Germann Transfer Station. The Contractor's designated facility to process the City's materials is Republic Services' River Recycling Facility. The Contractor shall implement the necessary measures to ensure the facilities will have the capacity to handle all City needs during the term of the Agreement.
- b. If Contractor is unable to use the designated facility(ies) due to an emergency, required maintenance, delay in the operational date of River Recycling Facility, Force Majeure Event, or other sudden unforeseen closure of the designated facility(ies), Contractor may use an alternative facility(ies) provided that Contractor receives written approval from City at least 24 hours prior to the use of that alternative. If the use of the alternative facility(ies) increases City's cost of collection services Contractor shall be responsible for all such additional costs incurred.
- c. The Contractor shall be responsible for all operations, maintenance, monitoring, and reporting requirements typically associated with the type of facility services provided including, but not limited to, the following:
 1. Providing a tipping floor space for the City's exclusive use for loads used for audits. The City's loads for audit must be tipped in a separate area and kept separate from other haulers and customers.
 2. Operating a scale system and calibrating the scales used in accordance with regulations established by Arizona State Administration of Weights and Measures, and standards in the industry.
 3. Weighing all in-coming collection vehicles that are delivering materials by, or on behalf of, City.
 4. Weighing all out-going collection vehicles after delivery of materials by, or on behalf of, City unless the tare weight of the collection vehicle has previously been documented.
 5. Directing on-site traffic to appropriate unloading areas and providing a safe working environment for facility users, visitors, and employees.
 6. Weighing transport trailers in both an empty and loaded state to determine the net weight of the materials delivered to the facility by, or on behalf of, City.
 7. Recording and maintaining records of the date, time, vehicle identification number, tare weight, and gross weight of all collection vehicles transporting materials delivered to the MRF or transfer station by, or on behalf of, City pursuant to the Agreement.
 8. Immediately clean up and remediate of any material that is spilled, scattered, leaked, or dropped because of the services provided.
- d. The Contractor shall, at a minimum, accept material five (5) days each week (Monday through Friday) between the hours of 6:00 a.m. to 5:30 p.m. Contractor shall also accept material on

Saturday from 6:00 a.m. to 5:30 p.m. for any week in which one of the following holidays falls on a weekday:

1. New Year's Day
2. Independence Day
3. Thanksgiving Day
4. Christmas Day

Should the City and Contractor agree to provide collection services on one of the holidays, roll over collection would not be required.

- e. For audit loads, the Contractor shall implement the measures to segregate the materials delivered by, or on behalf of, the City from material delivered by other entities.
- f. The Contractor shall implement the measures necessary to ensure the safety of all persons and equipment on the Contractor's property. This includes, but is not limited to, control of debris, and traffic control for equipment operations when collection vehicles are staging, unloading, maneuvering, and performing clean out.
- g. The Contractor shall implement the inspection and operating procedures to address the inadvertent receipt of hazardous materials at the facility.
- h. The Contractor shall implement the procedures to manage and eliminate, to the extent practicable, dust, odor, litter, vectors, traffic congestion and other potential nuisances regarding the operation of the facility.

Acceptable Materials

- a. The Contractor will assist the City with marketing and educational materials to communicate any changes to the list of Acceptable Materials to the City's customers at the inception and throughout the duration of the Agreement.
- b. The Contractor will accept, process and market the following Acceptable Materials:
 1. Aluminum cans and non-contaminated foil;
 2. Steel/tin cans;
 3. Glass food and beverage containers;
 4. Newspaper, magazines, office paper, junk mail and other recyclable papers
 5. Cardboard (corrugated);
 6. Plastic bottles and containers
 7. Plastic #5, PET #1, HDPE N and Color
 8. Recyclable metals
 9. Mixed plastics
 10. Other recyclable material agreed upon between the Contractor and the City.
- c. Chipboard will not be promoted to the City's customers as an Acceptable Material. The City and Contractor agree that chipboard will not be treated as Recyclables or Contamination for the purposes of the audit described in the Inspection and Audit Requirements Section below.
- d. The Contractor shall not dispose as waste any City recyclable material without prior approval and inspection of and by the City. The Contractor shall notify the City of its intent to landfill City recyclable materials, in writing, at least 10 days prior to the date it intends to begin landfilling the material. The Contractor shall be responsible for all costs associated with the landfilling of materials under this section.
- e. The Contractor shall not market any City recyclable material to markets that the Contractor knows or reasonably should have anticipated will dispose of the recyclable material as waste without prior approval of the City.
- f. In the event that the Contractor processes materials received from other customers that are considered recyclable materials under that customer's program but are not accepted under

the City's program, the Contractor shall not consider those materials to be contamination in the City's stream.

Performance Requirements

- a. The Contractor will follow a transition plan that ensures minimal disruption to program customers and the contracted materials transportation provider.
- b. The City and the Contractor will agree upon a minimum percentage of the recyclable materials received from the City, not including residual and contamination, the recycling facility will capture.
- c. The City and the Contractor will agree upon a minimum percentage of the captured recyclable material that must be sold in the open market. Materials should be sold to the end market with the highest price available in the open market.
- d. The Contractor is responsible for the disposal and the disposal cost for loads rejected as contaminated.
- e. The Contractor shall notify the City via telephone and email of any loads rejected as contaminated.

Office and Personnel Requirements

- a. The Contractor shall provide sufficient personnel to meet the requirements of the Scope of Work efficiently and effectively.
- b. The Contractor shall provide a local managing agent available to the City 365 days per year from 6:00 a.m. to the later of 5:30 p.m. or one-half hour after daily collection activities is complete. All persons acting as a local managing agent shall be identified as key staff and a mobile phone number and email address for the individual will be provided to the City.
- c. The Contractor shall establish an operations office. The office shall be open on all City recyclable collection days during the hours of 6:00 a.m. to the later of 5:30 p.m. or one-half hour after daily collection activities is complete.
- d. The Contractor shall notify the Contract Administrator via telephone and email of any complaints or inquiries from City residents within one business day.
- e. The Contractor shall notify the City via telephone or email of any incident that will affect delivery to the Contractor's facility as soon as the Contractor becomes aware of the incident.
- f. The Contractor shall respond to all additional reports or requests made by City in the manner provided in the report or request made by City.

Operating and Safety Requirements

- a. Annual Transfer Facility and Recycling Facility Operations Plan
 1. Within ninety (90) calendar days of execution of this Agreement, and annually within ninety (90) calendar days of the anniversary of the execution of this Agreement, the Contractor shall submit to the City for review and approval the Annual Recycling Facility Operations Plan. The City may require revisions to the plan prior to approval. The Plan will include, at a minimum:
 - Recycling Facility Receiving Plan
 - Recycling Facility Processing Plan
 - Recycling Facility Safety Plan
 - Recycling Facility Materials Marketing Plan
- b. Annual Transfer Facility and Recycling Facility Emergency Plan
 1. Within ninety (90) calendar days of execution of this Agreement, and annually within ninety (90) calendar days of the anniversary of the execution of this Agreement, the Contractor

shall submit to the City the Annual Emergency Plan within ninety (90) calendar days of execution of this Agreement to the Contract Representative for authorization. The Annual Emergency Plan shall provide for alternate processing and marketing services in the event the Contractor's facility is unable to accept Recyclable Material. The City may require revisions to the plan prior to approval.

- c. Annual Transfer Facility and Recycling Facility Hazardous Materials Plan
 - 1. Within ninety (90) calendar days of execution of this Agreement, and annually within ninety (90) calendar days of the anniversary of the execution of this Agreement, the Contractor shall submit to the City for review and approval the Annual Hazardous Materials Plan. The City may require revisions to the plan prior to approval. The plan shall detail the inspection and operating procedures to address the inadvertent receipt of hazardous materials at the facility.
- d. Annual Transfer Facility and Recycling Facility Nuisance Mitigation Plan
 - 1. Within ninety (90) calendar days of execution of this Agreement, and annually within ninety (90) calendar days of the anniversary of the execution of this Agreement, the Contractor shall submit to the City for review and approval the Annual Nuisance Mitigation Plan. The City may require revisions to the plan prior to approval. The plan shall detail the procedures to manage and eliminate, to the extent practicable, dust, odor, litter, vectors, traffic congestion and other potential nuisances regarding the operation of the facility.

Inspection and Audit Requirements

- a. The City may inspect the recyclables processing facility, including collection and processing equipment, at any time with prior reasonable notice.
- b. In addition to the inspection associated with the recyclables audit set forth below, the City may inspect the Recyclables delivered to the recyclables processing facility by, or on behalf of, the City at any time with prior reasonable notice to Contractor.
- c. Audits will be conducted annually at a mutually agreed-upon time. The City may request an audit be performed a second time within 30 days of the annual audit, at its discretion. Additional audits may be conducted as agreed between the City and the Contractor. Audits will be a hand sort and will be conducted as follows.
 - 1. A minimum inbound volume of 10 tons and no more than 15 tons, usually 3 or 4 trucks, will be selected by the City and the Contractor to be hand processed and weighed. This material will be placed in an area exclusive to City's material until the sort can occur.
 - 2. The City and the Contractor will agree on the day on which the sort will be conducted.
 - 3. On the day of the sort, the inbound collection trucks will be selected by the City and Contractor to dump material in the designated area.
 - 4. The City will provide a minimum of two employees to aid the Contractor in the sort and monitoring process.
 - 5. The Contractor will use 2-inch screens on remaining materials after hand sort is completed to mimic what would not be captured by the facility. Items that fall through screens will be treated as fines and fluff except for glass.
 - 6. Unacceptable Materials as defined in the Agreement will be treated as Residual.
 - 7. Material once sorted will be weighed and shown as percentages provided to the City upon completion. This commodity mix will be used to calculate the revenue share to the City until the next annual audit. An example of the revenue share calculation is included in Exhibit B.
- d. The Contractor shall submit weekly reports via email setting forth the tons of materials delivered to the recyclables processing facility by, or on behalf of, the City by material type

based on the latest audit. The weekly report shall also include the truck number, date, time, weight ticket number, and net weight associated with all materials delivered to the recyclables processing facility by, or on behalf of, the City. Weekly reports shall be submitted to City on or before the Wednesday of the week following the week covered by the report.

- e. The Contractor shall submit monthly reports via email that are a summary of the previous month's weekly reports. Monthly reports shall be submitted to City on or before the 8th of the month following the month covered by the report.

Invoices, Revenue Share, Recycling Education Fee and Supporting Documentation

- a. The Contractor shall submit a statement of fees and revenues on or before the 20th of each month for the previous month. The statement shall be itemized and include:
 1. Total tons received
 2. Tons by commodity
 3. Total processing fee
 4. Revenue by commodity
 5. Revenue due to, or cost due from, the City
 6. Recycling Education Fee due to City (if applicable)
- b. The Contractor shall remit revenue due to the City on or before the 20th of each month for the previous month.
- c. The City and the Contractor will agree on the source and format of documentation of commodity sales prices that support the statement of fees and revenues. The documentation will be included with the itemized statement.

Liquidated Damages

Any assessed liquidated damages will be withheld from payment due to the Contractor. When revenue is due to the City, any assessed liquidated damages will be added to the revenue due to the City.

Item	Description	Amount
General Items		
1.	Failure to timely provide notice of use of alternative facility(ies).	\$100 per occurrence
2.	Failure to abide by Personnel Requirements	\$50 per occurrence per day
3.	Failure to abide by any of the following plans: a. Annual Transfer Facility and Recycling Facility Operations Plan b. Annual Transfer Facility and Recycling Facility Emergency Plan c. Annual Transfer Facility and Recycling Facility Hazardous Materials Plan d. Annual Transfer Facility and Recycling Facility Nuisance Mitigation Plan	\$100 per occurrence or per day
4.	Failure to timely submit Annual Plans or required reports	\$50 per occurrence
Recyclables Processing Services		
5.	Failure to comply with required minimum material recovery standards.	\$100 per occurrence

Item	Description	Amount
6.	Failure to receive materials during specified collection hours	\$1,000 per load
7.	Failure to dispose of any materials at approved landfill	\$1,000 per ton
Payment of Revenue Due		
8.	Failure to remit revenue on or before due date	0.5% per day

**EXHIBIT B
COMPENSATION AND FEES**

Section 1 – Processing Fee.

The Processing Fee is a firm, fixed, all-inclusive fee for processing of City recyclable materials.

The Processing Fee is \$110.00 per ton, paid by the City to the Contractor.

Section 2 – Revenue Share

The Revenue Share is the percentage of revenue derived from the sale of material that will be paid to the City by the Contractor. The Processing Fee will be deducted from the proceeds due to the City.

80% paid to the City by the Contractor.

Sample Revenue Share Calculation

$((\text{Total Revenue share per ton} * 80\%) * \text{Total Monthly Tons}) - \text{Total Tip Fee} = \text{Amount owed to/from City}$

If Share amount exceeds Tip fee a rebate will be provided to Chandler

If Tip fee exceeds Share amount Chandler will owe remaining balance

A sample invoice is attached.

EXHIBIT C TO AGREEMENT INSURANCE AND INDEMNIFICATION

1. SPECIAL AND HAZARDOUS WASTE INDEMNIFICATION:

Contractor (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the City of Chandler and its officers, officials, agents and employees (as "Indemnitee") from and against any and all demands, claims, complaints, losses, damages, actions or causes of action, assessments, liabilities, costs or expenses including, without limitation, interest, penalties and reasonable attorney's fees and reasonable expenses of investigation and remedial work (including investigations and remediation by engineers, environmental consultants and similar technical personnel) asserted against or imposed upon or incurred by Indemnitee arising in connection with, or resulting from, any Environmental Law, including but not limited to, any use, generation, storage, spill, release, discharge or disposal of any Special Waste or Hazardous Waste that is now or comes to be located on, at, about or under the property or because of, or in connection with, the violation of any Environmental Law (hereinafter collectively referred to as "Claims") to the extent that such Claims are caused by the Fault of the Indemnitor, its officers, officials, agents, employees, contractors, volunteers, tenants, subtenants, invitees or licensees. As used in this section: (a) "Special Waste" or "Hazardous Waste" are those substances defined in Exhibit A and include, but are not limited to substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal, state or local laws and regulations, including common law, that relate to health, safety or environmental protection; and (c) "Fault" means those nonculpable acts or omissions giving rise to strict liability under any Environmental Law pertaining to Special Waste, as well as culpable conduct (negligence or willful misconduct). In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

2. INSURANCE REQUIREMENTS:

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subconsultants. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase such additional insurance as may be determined necessary.

2.1. MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

2.1.1. Commercial General Liability – Occurrence Form

Policy must also include coverage for products completed operations, independent contractors, personal injury, property damage, and advertising injury.

General Aggregate	\$4,000,000
Products – Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

The policy must be endorsed via blanket-form endorsement to include the following as additional insureds: "The City of Chandler, its agents, representatives, officers, directors, officials, employees, and volunteers This endorsement may not contain an exclusion or limitation of completed operations coverage as regards the additional insured except with respect to the stated aggregate limits of liability. The policy may not exclude the explosion/collapse/underground ("xcu") hazard.

2.1.2. Automobile Liability

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

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

The policy must via blanket form endorsement contain the "CA 9948" endorsement. The policy must also be endorsed to include the following additional insureds: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers

2.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

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

2.1.4. Pollution Legal Liability:

If the Scope of Services in this Agreement requires the acceptance, transport, storage or disposal of any hazardous materials or regulated substances, the facility must provide coverage with limits of at least:

Per Incident	\$5,000,000
Annual Aggregate	\$5,000,000

- The policy should be written on an "occurrence" basis with no sunset clause or if written on a "claims-made" basis, it must be maintained for a period of not less than eight years with the retroactive date to be prior to or held constant with the date of this contract.
- Such insurance must name the City of Chandler and its subsidiaries and affiliates as Additional Insureds with respect to liability arising out of the activities performed by, or on behalf of the Contractor.
- The auto liability policy must contain an "MCS-90" endorsement providing for clean-up of pollution conditions arising from transported product.
- The policy must include coverage for:
 - On and off-site cleanup of sudden and gradual pollution conditions arising from the Contractor's facility.
 - Third-party claims for on and off-site bodily injury including sickness, disease, mental anguish, or shock sustained by any person, including death and medical monitoring costs.
 - Third-party claims for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed and diminution in value.
 - Claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo if the Scope of Services in the Agreement requires the transportation of any hazardous materials.
 - Defense including costs, charges and expenses incurred in the investigation, adjustment, or defense of claims for such compensation damages.

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

- 3.1** On insurance policies where the City of Chandler is named as an additional insured, the City of Chandler is an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are more than those required by this Agreement.
- 3.2** The Contractor's insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

4. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Agreement other than workers' compensation and pollution legal liability must provide the required coverage and must provide thirty (30) days prior written notice of cancellation to the City except for non-payment of premium for which a ten (10) day notice will be provided. All required notices may be sent via email and must be sent directly to the addresses listed below and must be sent by certified mail, return receipt requested:

City of Chandler
Attention: Purchasing Division
P.O. Box 4008, Mail Stop 901
Chandler, Arizona 85244-4008
Phone: (480) 782-2400
Email: purchasing@chandleraz.gov

With a copy to: Office of the City Attorney
Attention: Risk Management
175 South Arizona Avenue
P.O. Box 4008 Mail Stop 602
Chandler, Arizona 85244-4008
Phone: (480) 782-4640
Fax: (480) 782-4652
Email: legal.notices@chandleraz.gov

5. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
6. **VERIFICATION OF COVERAGE:** Contractor must furnish City with certificates of insurance (ACORD form or equivalent approved by City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to evidence coverage on its behalf. All certificates and blanket-form endorsements are to be received and approved by City before the Agreement is signed by the City. Each insurance policy required by this Agreement must be in effect at or prior to commencement of this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to reasonably provide evidence of renewal is a material breach of this Agreement. All certificates required by this Agreement must be sent directly to the City of Chandler Solid Waste Division with a copy to Risk Management at the addresses listed in Section 3. The Agreement number and description are to be noted on the certificate of insurance. At City's request, Contractor must make certified copies of all insurance policies required by this Agreement available for City's review through a representative and at Contractor's most proximate business location. City agrees to only make this request if there is a legitimate business need for City to view one or more policies.
7. **SUBCONTRACTORS:** Contractors' policies, other than workers' compensation, must include all subcontractors as additional insureds under its policies or Contractor must furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors must be subject to the minimum requirements identified above.

8. **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Office of the City Attorney, whose decision is final. Such action will not require a formal contract amendment but may be made by administrative action.

**EXHIBIT D TO AGREEMENT
SPECIAL CONDITIONS**

NONE