



City Clerk Document No. _____

City Council Meeting Date: September 22, 2022

**CITY OF CHANDLER SERVICES AGREEMENT
TRANSPORTATION OF BULK WASTE AND OPERATION OF RECYCLING SOLID WASTE
COLLECTION CENTER
CITY OF CHANDLER AGREEMENT NO. PW2-962-4352**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and Otto Trucking, Inc., and Arizona 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 contract for transportation of bulk waste and operation of recycling solid waste collection center 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

The term of the Agreement is five years and begins on October 1, 2022, and ends on 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 three additional terms of one year each, or portions 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

4.1 Unless amended in writing by the Parties, Contractor's compensation and fees as more fully described in Exhibit B for performance of the services approved and accepted by the City under this Agreement must not exceed \$1,415,882 for the first year of the Agreement, October 1, 2022, through September 30, 2023. Contractor must submit requests for payment for services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work completed on the service during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted services within 30 days of the City's receipt of the request for payment. Contractor bears all responsibility and liability for any and all tax obligations that result from Contractor's performance under this Agreement.

4.2 Annual Price Adjustment. On the annual anniversary date of the beginning date of the Agreement, an increase in the amount of 2% will be applied to all unit prices.

4.3 Monthly Fuel Adjustment. Fluctuations in fuel costs above or below \$3.48 per gallon of diesel fuel will be recovered by the Contractor or the City through a Fuel Surcharge or Discount (FSD) computed using the following formula. Fuel cost will be determined based on the Department of Energy West Coast Less California (PADD 5) Region Index.

$$\text{Fuel cost} - \$3.48 / 5 \text{ miles per gallon} = \text{FSD per mile}$$

$$\text{FSD per mile} \times \text{round trip miles} = \text{FSD per load}$$

The FSD will be computed on a cents per mile basis, and translated to a per load basis for invoicing purposes. Fractions will be rounded to the nearest whole cent. Revisions to the FSD will occur on

the first Monday of every new month using the average price of diesel fuel for the previous month.

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 on the basis of 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 of 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, to terminate or abandon any service provided for in this Agreement, or abandon any portion of the Project for which services have been performed by the Contractor. 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. The City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: in the event that (a) the Contractor fails to perform pursuant to the terms of this Agreement, (b) the Contractor is adjudged a bankrupt or insolvent, (c) the Contractor makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for Contractor or for any of Contractor's property (e) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the Contractor fails to cure default within the time requested. Where Agreement has been so terminated by City, the termination will not affect any rights of City against Contractor 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 (Indemnatee) 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 Indemnatee from and against any and all Claims, except those arising solely from Indemnatee'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 Indemnatee 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 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 of 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.

5.7 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.

5.8 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

For the Contractor

Name: Alan Otto
 Title: President
 Address: 4220 E. McDowell Rd., Ste. 108
Mesa, AZ 85215
 Phone: 480-641-3500
 Email: alan@ottotrucking.com

5.9 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.

5.10 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.

5.11 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.

5.12 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.

5.13 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.).

5.14 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.

5.15 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must assign to the City 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 and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

5.16 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.

5.17 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.

5.18 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.

5.19 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.

5.20 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.

5.21 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.

5.22 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.

5.23 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 and every provision.

5.24 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.

5.25 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 as a result 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 into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

5.26 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. In the event that 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 into 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.

5.27 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.

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

5.29 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.

5.30 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.

5.31 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.

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

5.33 Date of Performance. If the date of performance of any obligation or the last day of any time period 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.

5.34 Delivery. All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. The Contractor will retain title and control of all goods until they are delivered and accepted by the City. All risk of transportation and all related charges will be the responsibility of the Contractor. All claims for visible or concealed damage will be filed by the

Contractor. The City will notify the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

5.35 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.

5.36 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.

5.37 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 kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.38 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

5.39 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.

5.40 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.

5.41 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.

5.42 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.

5.43 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.

5.44 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.

5.45 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.

5.46 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 actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.

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

By: _____

Its: Mayor

FOR THE CONTRACTOR

By: Alan Otto

Its: pres

APPROVED AS TO FORM:

By: _____
City Attorney 

ATTEST:

By: _____
City Clerk

EXHIBIT A SCOPE OF SERVICES

CONTRACTOR RESPONSIBILITIES

Group 1

1. Facility Locations

- a. Surface Water Treatment Plant (SWTP), 1475 E. Pecos Road
- b. Ocotillo Water Reclamation Facility (OWRF), 3333 S. Old Price Road
- c. Airport Water Reclamation Facility (AWRF), 905 E. Queen Creek Road
- d. Ocotillo Brine Reduction Facility (OBRF), 3737 S. Old Price Road
- e. Street Sweeper Waste Locations 975 E. Armstrong Way, Roosevelt, Dobson, and RO ponds
- f. Water Distribution Waste, 975 E. Armstrong Way and 1475 E. Pecos Road

2. Annual Estimated Quantities

- a. SWTP 8,500 tons
- b. OWRF 20,000 tons sludge and screenings
- c. AWRF 20,000 tons, 375 tons screenings/grit
- d. OBRF 20,000 tons sludge
- e. Streets 3,500 tons
- f. Water Distribution 1,500 tons

3. Disposal

- a. The Contractor will transport all waste directly to Waste Management Butterfield Station Landfill, located at 40404 South 99th Ave., Mobile, AZ 85239, for disposal under separate contract. As a backup, and only with permission from the City, AWRF, OWRF, and OBRF sludge can be disposed of at Waste Management Northwest Regional Landfill, located at 19401 W. Deer Valley Rd., Surprise, AZ 85387.
- b. The Contractor will have all loads weighed at the landfill receiving the waste material.
- c. The Contractor will unload all waste at either Butterfield or Northwest Regional Landfill.
- d. The Contractor will follow all rules at Butterfield Landfill/Northwest Regional Landfill.

4. Equipment

All equipment provided by the Contractor will be operable and roadworthy.

5. Payment

Payment for RSWCC will be based on the weight measured at by the RSWCC scales and the City shall submit to the Contractor, after completion of the task or combination of tasks listed in the Agreement, a statement of charges for the work completed under that Agreement, in conformance with the pricing schedule set for in Exhibit C. Payment for all other facilities serviced under this agreement will be based on the weight measured at the Butterfield Landfill Scale.

6. Facility Requirements

- a. Surface Water Treatment Plant (SWTP),
Sludge generated by the SWTP is held in 10 sludge drying beds. The Contractor will provide equipment and labor required to remove sludge from the drying beds and transport sludge to Butterfield Landfill. The Contractor will monitor beds and empty them as needed. Once a

bed clearing operation has been initiated, the Contractor will continue hauling sludge until such time as the bed has been completely emptied. If, at any time, the City determines beds require emptying, the Contractor shall respond and complete loading and transportation from the drying beds within 10 days from notification by SWTP staff.

Liquidated Damages

Performance under this agreement is subject to the following liquidated damages.

Event	Damage
Failure to complete loading and transportation from drying beds within 10 days of notification	\$500 per day

The Contractor will cleanup any sludge which has spilled on the ramps into the drying beds and the street in front of the drying beds after the beds have been emptied. The Contractor shall also monitor their hauling truck’s path to ensure track-out sludge has been cleared from all roadways which are a part of, or are directly adjacent to, SWTP property. Spills shall be cleaned up immediately by the Contractor’s personnel. The City anticipates the Contractor will be required to clear the drying beds 4 on average 10 times per year. However, the frequency may increase or decrease due to treatment process influence.

b. OWRF Water Reclamation Facility (OWRF)

Sludge generated by OWRF is loaded directly into the Contractor’s vehicles from the plant sludge hopper. The Contractor will provide equipment and labor required to load and transport sludge to Butterfield Station or Northwest Regional Landfill. The Contractor will provide an adequate number of vehicles to maintain continuous operation.

The Contractor will be responsible for verifying legal weight limits. If it is determined that vehicles are overloaded, OWRF staff will assist in removal of material in containers if requested by the Contractor.

OWRF staff and the Contractor will develop a schedule, which allows continuous operation of the plant while minimizing the standby time of the Contractor. The current collection schedule is Monday through Friday, and may include Saturday. Schedules are subject to change based on production schedules.

c. Airport Water Reclamation Facility (AWRF)

Sludge generated by AWRF is loaded directly into Contractors vehicles from the plant belt presses. Up to Three trucks can be loaded simultaneously. The Contractor will provide equipment and labor required to transport sludge to Butterfield Station or Northwest Regional Landfill. The Contractor will provide an adequate number of vehicles to maintain continuous operation. A minimum of two trucks will be provided.

Trucks may make use of the AWRF axle scale to verify weights. The Contractor will be responsible for verifying legal weight limits. If it is determined that vehicles are overloaded, AWRF staff can assist in the removal of sludge from vehicles if requested by the Contractor.

AWRF staff and the Contractor will develop a schedule, which allows continuous operation of the plant while minimizing the standby time of the Contractor. The current collection

schedule is Monday through Friday, and may include Saturday. Schedules are subject to change based on production schedules.

Screenings and grit generated by AWRf will be loaded by the City into a roll-off container provided by the City. The Contractor shall transport the containers when full. The current schedule for transporting the screening/grit container is approximately thrice per month.

- d. Ocotillo Brine Reduction Facility (OBRF)
Sludge generated by the OBRF is loaded directly into Contractor’s vehicles from the plant. The Contractor is responsible for providing all equipment and labor required to transport sludge. The Contractor is responsible for verifying legal weight limits. The Contractor will transport sludge generated by the OBRF to the Waste Management Butterfield Landfill or Northwest Regional when Butterfield is not an option and unload sludge at the landfill.

The Contractor will provide 2 additional yard trucks in good working order and at least 5 end dump trailers for the purpose of continuous loading of sludge. The equipment provided must be roadworthy and certified annually to meet DOT requirements. Additional trailers will be needed to maintain operations during holidays when landfills are closed as requested by the City. The Contractor will coordinate with the City to make sure necessary equipment is available on site to provide continuous loading and operation. When yard trucks or trailers need repair, for whatever reasons, replacement equipment will be brought out if it will be longer than a 24 hour period.

Liquidated Damages
Performance under this agreement is subject to the following liquidated damages.

Event	Damages
Failure to provide necessary equipment on site to provide continuous loading and operation	\$500 per day
Failure to repair or replace equipment within 24 hours	\$200 per day

- e. Street Sweeper Waste
Waste generated by the City street sweeping operation is dumped in a holding area at 975 East Armstrong Way and loaded directly into roll-off containers. The Contractor will load the waste located in the holding area at Armstrong Way and transport to Butterfield Landfill for disposal. Currently, there are 3 locations for the Streets Division:

The Contractor will load the containers at other locations listed below and transport to Butterfield Landfill for disposal. The Contractor will provide required number of roll-off containers to maintain operation. These locations are the Roosevelt Site (1 container) and the Dobson Well Site (1 container).

All containers are 20-yard roll-offs. The Contractor shall monitor containers and empty and return them as needed. If the City determines containers require emptying, the Contractor will empty and return containers within 24 hours of the call for service. The Contractor will be responsible for verifying legal weight limits and loading containers onto transporter. The Contractor may use the RSWCC scale if necessary to verify weights.

There are currently approximately 5 pulls per week at 975 E Armstrong Way and the other sites are pulled about 3-4 times per month.

f. **Water Distribution**

Waste generated by the City Water Distribution operation is contained in a segregated waste storage area at the City Yard located at 975 E. Armstrong Way and at 1475 E. Pecos Rd. The Contractor will load and transport the waste to Butterfield Landfill for disposal.

The Contractor will monitor the waste storage area and remove waste as needed. If the City determines waste requires removal, the Contractor will remove waste within 24 hours of the call for service. The Contractor will be responsible for verifying legal weight limits. The Contractor may use the RSWCC scale if necessary to verify weights.

Group 2

1. Facility Location

- a. Recycling-Solid Waste Collection Center (RSWCC) 955 E. Queen Creek Rd.

2. Annual Estimated Quantities

- a. RSWCC 15,000 tons

3. Disposal

- a. The Contractor will transport all waste directly to Waste Management Butterfield Station Landfill, located at 40404 South 99th Ave., Mobile, AZ 85239, for disposal under separate contract.
- b. The Contractor will have all loads weighed at Butterfield Landfill.
- c. The Contractor will unload all waste at Butterfield Landfill.
- d. Butterfield Station Landfill hours of operation are Monday through Friday 6 a.m. to 4 p.m. and Saturday 6 a.m. to 12 p.m.
- e. The Contractor will follow all rules at Butterfield Landfill.

4. Payment

- a. Payment for RSWCC will be based on the weight measured at by the RSWCC scales.
- b. The City will submit to the Contractor, after completion of the task or combination of tasks listed in the Agreement, a statement of charges for the work completed under that Agreement, in conformance with the pricing schedule set for in Exhibit C.

5. Facility Requirements

- a. General
 - The City of Chandler RSWCC accepts Municipal Solid Waste (MSW) and selected recyclable materials.
 - Current days and hours of operation are Thursday through Monday, including Saturday and Sunday.
 - Hours of operation are from 8:00 a.m. to 4:00 p.m. The City of Chandler observes nine (9) holidays, whereby the transfer facility is either closed on the holiday and/or the date for which the City will observe the holiday. These holidays include: New Year's Day, Civil Rights/Martin Luther King Day, Presidents' Day, Memorial Day, July 4th, Labor Day,

Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day. Additionally, the RSWCC is closed on Easter Sunday.

- Days and hours of transfer facility operation are subject to change with 30-days advanced notice to the Contractor.
- Restroom and break room facilities will be available to the Contractor. The break room shall be kept clean, safe and organized by the Contractor.

b. Litter Control

- The Contractor shall not spill or scatter any MSW during loading, transfer or transportation operation.
- The Contractor shall cover or enclose all loads immediately upon loading, and transport in a manner approved by the City.
- If any MSW is spilled or scattered during the Contractor's operation, the Contractor shall immediately clean up to the satisfaction of the City.
- The Contractor is required to clean the entire transfer area of all litter, oil spills, dust and dirt at the end of each day that any Contractor activity takes place.
- If any liquid (oil, hydraulic fluid, etc.) leaks or sprays during the Contractor's operation, the Contractor shall immediately, and no later than 5:30p.m. that day, clean up to the satisfaction of the City, utilizing their own drying agent to complete the clean up.
- The entire area must be "broom clean" at the end of each day. The transfer area includes, but is not limited to, the dumping area, the upper scale area, the lower scales area, trailer movement and storage areas, and tractor semi-trailer ingress and egress lanes.
- The lower scale areas must be especially cleaned to prevent dirt and debris buildup underneath the scale platforms to ensure proper and continually accurate operation. The Contractor shall at a minimum power wash the lower scales, including underneath the grates, once every calendar month.

c. Equipment and Personnel Requirements

- The Contractor will maintain a sufficient number of trucks and transfer trailers to load and contain all MSW deposited at the Chandler transfer facility at the time of its deposition, including a minimum of 8 trailers on site every Saturday and Sunday.
- The Contractor will be allowed to park up to 25 transfer trailers and tractors at the Chandler transfer facility and up to 5 trailers at Butterfield Station Landfill.
- The Contractor will transport as much MSW as possible during the Butterfield Station Landfill's hours of operation to minimize the amount of MSW that will be stored at the City of Chandler's transfer facility site.
- The Contractor shall provide sufficient back up equipment to handle any volume peaks and equipment problems.
- The Contractor will have equipment capable of unloading MSW or make arrangements with Waste Management to use the tipper located at Butterfield Station Landfill.
- The Contractor will provide sufficient equipment to move and shuttle empty and full trailers in the daily operation of loading and covering the MSW deposited at the City of Chandler transfer facility.
- The Contractor will provide sufficient equipment for pushing scrap metal at the end of the day or as needed during the day at the City of Chandler transfer facility.
- All equipment will have a scheduled maintenance program keeping the equipment to factory specifications. Any cleaning and repair activities required to maintain the

Contractor's equipment shall be done off site, unless emergency repairs are required. Any on-site emergency repairs must be approved by the City of Chandler.

d. Operational Requirements

- The Contractor will be responsible for all operational aspects of the transfer facility except checking customer residency and providing the initial directions to customers to direct customers where to place the material brought to the transfer facility.
- The Contractor will provide sufficient personnel to spot and direct the loading of the MSW, walk the tipping floor and spot check loads while customers are unloading, operate loading equipment, cover transporters, shuttle transporters and operate transporters. Sufficient personnel is a minimum of three personnel on site and more if required at peak times.
- The Contractor will provide sufficient personnel to proficiently communicate instructions to customers for disposing waste and diverting recyclable materials accepted for recycling at the transfer facility and to direct placement of these recyclable materials in their proper areas.
- The Contractor's spotters must be trained to identify unacceptable waste (including Hazardous Waste) as defined by City of Chandler Code 44-1. At a minimum, spotter training shall include certification through 40-hour HazWoper training as specified in the code of federal regulations 29 CFR 1910.120 (e) (1, 2, and 3) and the Solid Waste Association of North America's waste screening program.
- The Contractor will notify the City of any unacceptable waste including Hazardous Waste. The City will determine if the waste should be accepted or rejected.
- The Contractor will be responsible for unacceptable waste including Hazardous Waste that is allowed to be loaded into their transfer vehicles without notification to the City.
- The City will operate the RSWCC scales and record the weights of the transport vehicles, to include the tare (empty) full weights, and net weights of each transport trailer that is loaded.
- The Contractor must treat all customers of the transfer facility with courtesy and respect.

e. Liquidated Damages

Performance under this agreement is subject to the following liquidated damages.

Event	Damages
Failure to limit equipment fluid leaks to 1 per month. A leak is considered more than 1 gallon of fluid.	\$200 per leak in excess of 1
Failure to complete power washing of lower scales (section 5b) on a monthly basis.	\$300 per day

EXHIBIT B COMPENSATION AND FEES

Unit costs are inclusive of all costs, less the fuel surcharge, associated with the performance of the services described in the Scope of Services. The fuel surcharge, calculated in accordance with Section 4.3, will be included in invoices as a separate line item.

Facility	Estimated Annual Tons	Unit Cost per Ton
SWTP	8,500	\$17.75
OWRF	20,000	\$13.62
AWRF	20,000	\$14.25
AWRF Screenings/Grit	375	\$35.00
Streets	3,500	\$14.84
Water Distribution	1,500	\$14.84
OBRF	20,000	\$12.48
RWSCC	15,000	\$26.89

Facility	Unit	Cost per Month
OBRF	Yard Truck	\$800 each
OBRF	End Dump	\$550 each

EXHIBIT C TO AGREEMENT INSURANCE

INSURANCE

General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent

contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*
Vehicle Liability: Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 - 1. The Contractor's insurance must contain broad form contractual liability coverage.
 - 2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 - 3. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 - 5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 - 6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a

minimum period of three years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this three year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

EXHIBIT D TO AGREEMENT SPECIAL CONDITIONS

ACCESS TO SECURED FACILITIES

Contract Worker Access Controls, Badge and Key Access Requirements. A Contract Worker shall not be allowed to begin work in any City facility without: (A) The prior completion and the City's acceptance of the required background screening; and (B) when required, the Contract Worker's receipt of a City issued badge. A badge will be issued to a Contract Worker solely for access to the City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker. Any and all fees associated with security badging will be assessed in compliance with Chandler City Code §4-22.

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

Stolen or Lost Badges or Keys. Contractor shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

Return of Badges or Keys. All badges and keys are the property of the City and must be returned to the City within one business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.

Contractor's default under this Section shall include, but is not limited to the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor shall be liable for and shall pay to the City the sum of \$1,000.00 for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor breaches this Section. The parties further agree

that three breaches by Contractor of this Section arising out of any default within a consecutive period of three months or three breaches by Contractor of this Section arising out of the same default within a period of 12 consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.