

**CITY OF LITCHFIELD PARK
LICENSE AGREEMENT**

This License Agreement (the “Agreement”) made and entered into this 19th day of April, 2023, by and between Waste Management of Arizona, Inc. (the “Licensee”) and the City of Litchfield Park, an Arizona municipal corporation (the “City”). Licensee and the City may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. WHEREAS, the City issued a Notice and Invitation for Proposals (“RFP”) seeking proposals from vendors for residential solid waste collection services, multi-family solid waste collections services, recycling collection services, city facilities solid waste collection services and city facilities recycling collection services within the City (the “Services”); and,

B. WHEREAS, the Licensee submitted a proposal for the Services within the City in response to the RFP (the “Proposal”).

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **DEFINITION AND TERMS**: For the purpose of this Agreement the following words or terms shall be defined as hereinafter set forth:

A. “AGREEMENT” OR “AGREEMENT DOCUMENTS” shall mean the Notice and Request for Proposals, Information for Proposers, License Agreement, General Specifications, Technical Specifications, Proposal Form, Proposers Questionnaire, Authorized Signature Form, No Collusion Affidavit, Proposal Bond, Performance Bond, Notice of Award, and addenda thereto, if any.

B. “APPLICABLE LAW” shall mean any law, regulation, requirement, or order of any federal, state or local agency, court or other domestic or foreign governmental body, or interpretation thereof by any court or administrative agency of competent jurisdiction, and requirements of all permits, licenses, and governmental approvals applicable to this Agreement.

C. “BULK ITEM” shall mean the collection of bundled solid waste that does not exceed 4’x4’x2’and all uncontained residential refuse/recycling placed for collection as specified in the technical specifications of the Agreement Documents (i.e., residential appliances, furniture, box springs, mattresses, carpet cut into four-foot lengths, yard and tree clippings

bundled in four foot or less lengths, able to be easily handled by one person). Such materials may include furniture (no sleeper sofas), carpet (cut and bundled), mattresses (queen or smaller). All mattresses, box springs, and upholstered furniture must be wrapped in plastic and sealed with duct tape prior to collection.

D. "BULK ITEM COLLECTION" shall mean the collection, transportation and disposal of bulk items.

E. "CITY" shall mean the City of Litchfield Park (Arizona), its officers, employees or representatives.

F. "CITY FACILITIES" shall mean all City owned or leased property including buildings, parks, yards, recreation facilities, and any other facility that may be added in the future.

G. "CITY MANAGER" shall mean the City of Litchfield Park City Manager.

H. "COLLECTION SERVICE" shall include bulk item collection, contained collection, recycling/resource recovery, special services, collection from city facilities of items originating in or generated from the service area.

I. "CONTAINED COLLECTION" shall mean the collection, transportation, and disposal of all residential refuse/recycling placed for collection in City of Litchfield Park; and refuse containers at City facilities.

J. "CURBSIDE" shall mean a location in front of the house, or alley, close to, but not on, the City Street or paved sidewalk.

K. "CUSTOMERS" shall mean customers of Licensee.

L. "LICENSEE" shall mean the individual, corporation or partnership performing the Work under this Agreement.

M. "MAY" shall mean permissive.

N. "METAL/PLASTIC CONTAINER COLLECTION" shall mean collection, transportation, and disposal of an eight (8) cubic yard container, six (6) cubic yard container, four (4) cubic yard container and two (2) cubic yard containers from a property location. It shall also mean the collection of containers specified in Agreement.

O. "MULTI-FAMILY COLLECTION" shall mean collection, transportation, and disposal of bulk items and recycling/resource recovery at apartment complexes or similar dwellings, which utilize three (3) or six (6) cubic yard bins.

P. "RECYCLABLE MATERIALS" shall mean glass, #1 - #7 plastics, tin, paper (including junk mail and magazines), newspapers, cardboard, chipboard, aluminum, and aseptic boxes and those materials as more fully defined in Exhibit B, attached hereto and incorporated herein.

Q. "RECYCLING" or "RESOURCE RECOVERY" shall mean the use, reuse, or reclamation (i.e., recovery of a usable product) of a discarded material.

R. "REFUSE" shall mean all putrescible and non-putrescible wastes, organic or inorganic wastes, combustible, and noncombustible wastes, but not including human body waste or other sewage waste. Refuse shall include bulk rubbish, yard refuse that has not been placed by commercial contractors, construction and demolition waste that has not been placed by commercial contractors, and garbage. Refuse does not include construction/building material, batteries, dirt, rocks, automotive parts, tires, 55-gallon drums, paint, pesticides, oil, flammable liquids, or appliances containing Freon or similar refrigeration gas.

S. "RESIDENCE" shall mean any single-family unit, duplex or triplex used as a domicile.

T. "SERVICE AREA" shall be within the corporate limits of the City of Litchfield Park, which choose to utilize the City contracted provider. The service area may be expanded upon annexation of land by the City.

U. "SPECIAL SERVICES" shall mean special City collection events including additional container collections, transportation, and disposal as requested by the City.

V. "UNCONTROLLABLE CIRCUMSTANCES" shall mean any act of terrorism, act of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics or epidemics, industry-wide labor or equipment shortages, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party.

W. "WORK" shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of this Agreement and the carrying out of all duties and obligations imposed by this Agreement

2. SCOPE OF WORK: As detailed in the RFP, this Agreement and the Agreement Documents, Licensee shall provide all labor, equipment, and materials necessary for residential refuse collection and container, residential bulk item collection, contained collection, curbside recycling material collection and container, collection from City facilities as such terms are defined and detailed in the Agreement Documents, originating, generated or accumulated within the service

area as it now exists or may hereafter exist in accordance with the contractual documents and proposal. The Scope of Work for this Agreement does not include services to “Multi-Family Residential Property” pursuant to A.R.S. § 49-746.

Licensee shall provide twice weekly curbside pickup service for refuse and recyclable materials at the customer’s individual residence, and provide one (1) 96-gallon, or 65-gallon, container with a hinged lid on wheels for residential refuse and one (1) 96-gallon, or 65-gallon, container with a hinged lid on wheels for residential recycling materials prior to commencement of contract.

Licensee shall perform the Scope of Work, or cause it to be done and performed in a good and workman-like manner in accordance with and as more fully described in the RFP, this Agreement, and the Agreement Documents, all of which are incorporated herein by references and made a part hereof as though set forth in full. The inclusion of certain terms of the RFP in this Agreement shall not be interpreted as excluding other terms of the RFP not specifically included in this Agreement.

3. BULK ITEM COLLECTION: Residential customers of Licensee will have the right to pre-scheduled collection option for Bulk Items. Residential customers can schedule Bulk services in advance online through their My WM account at wm.com. Bulk Item collection will be limited to three large items per event at no additional charge, limit of six (6) events per customer per year. Residential customers who have an excess of three (3) items or need more than six (6) Bulk Item collections annually can pay an additional fee to have the items picked up. Licensee shall also provide residential customers at no additional cost two (2) additional yearly dumps of up to three large items at the WM White Tank Transfer Station located at 18605 West McDowell Road Goodyear, AZ, (proper documentation will be needed for such services).

4. EXCLUSIVENESS OF LICENSE AGREEMENT: Except as otherwise provided in the Agreement Documents, by law, or stated below, Licensee shall have the exclusive duty, right and privilege during the term of this Agreement to perform collection services within the service area as herein defined, except as follows:

A. A. This Agreement shall not prohibit the actual producers of refuse/recycling, or the owners of the premises upon which recycling has accumulated, from personally collecting and transporting their recycling.

B. This Agreement shall prohibit (1) collectors of residential refuse originating outside the service area from hauling such refuse/recycling over City streets to a disposal site located outside the City and (2) the Licensee shall refrain from bringing in refuse/recycling collected in areas outside the City into the City while collecting City residents’ refuse/recycling, provided however, nothing herein shall be deemed to interfere with interstate commerce. Any interstate commerce traffic shall take the most direct route to its destination.

C. The Licensee’s right to perform collection services shall not be exclusive when the Licensee fails to maintain complete regular collection services pursuant to this Agreement and

the collection schedules then in effect. The City may provide for collection and/or transportation of refuse/recycling by persons other than the Licensee during such periods.

D. The Licensee shall not have the exclusive right to perform collection services in the event the Licensee is unable to provide initial, temporary, or special service to any customer within five (5) calendar days from the receipt of the service request.

5. PUBLIC CONVENIENCE AND SAFETY: The Licensee shall be familiar with and operate within the guidelines set forth by the Occupational Safety and Health Act. The Licensee is granted the right to use dedicated streets, alleys and refuse/recycling collection easements for the purpose of performing the Scope of Work specified in this Agreement; the Licensee is not, however, granted exclusive use of such streets, alleys or easements. The Licensee shall handle the Work in a manner that will cause the least inconvenience or annoyance to the general public and to property owners. Whenever the Licensee's operations create a condition hazardous to traffic or to the public, the Licensee shall furnish, erect, and maintain such fences, barricades, lights, signs and other devices, and take such other protective measures as are necessary to prevent accidents or damage or injury to the public. All such conditions must be immediately reported to the City and any barricades, lights, signs or other devices erected must be coordinated with the City and conform to City requirements. Whenever there may be a temporary modification in a contained or uncontained refuse/recycling collection point due to the Licensee's operations or utility/street service operations, the Licensee shall be responsible for written notification of such modifications to each affected customer. Notification must be placed on the customer's door. A notice attached to the container is not authorized. The Licensee shall be responsible for Collection Services during temporary disruptions as specified in the Agreement Documents.

6. LICENSEE RATES; ADJUSTMENT TO RATES:

A. Licensee Rates. The unit monthly fees for providing collection services required by the License Agreement documents shall be submitted pursuant to Exhibit A, attached hereto and incorporated herein (collectively, the "Rates"). Although Multi-Family rates are included in Exhibit A, for the use of any Multi-Family customers within the City, the Licensee has the right and ability to adjust such rates based on market conditions. Licensee shall bill the customer directly and shall be responsible for all such billings and collections from the customer. Licensee specifically agrees and acknowledges that the customer is responsible for payment for collection services and City shall not be liable for unpaid bills of the customer. Licensee may suspend services to customers that become 60 days past due on Licensee invoices, and late fees will apply to delinquent invoices.

Commodity prices and fluctuations for Recyclable Materials or subject to change. On a semi-annual basis ~~to coincide with the annual Adjustment Date~~, Licensee will review the Recyclable Materials base price (currently at a baseline of a \$70.00 Tip fee), and if the tip fee fluctuates up or down by more than \$15.00 from the then-current baseline, then Licensee shall increase or decrease the Recyclable Materials portion of the Rate by \$0.15 per resident.

B. Annual Adjustment to Rates. Commencing on the date which is one (1) year after the Commencement Date, and on the same date annually thereafter (the "Adjustment Date"), the Rates shall be increased by an amount equal to the then-current Rates multiplied by one hundred percent (100%) of the percentage change of the average Consumer Price Index, series CUUR0000SEHG CPI-U Water and Sewer and Trash Collection Services, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI-U") from the 12-month period ending the next previous April 30 to the average CPI-U for the 12-month period ending the previous April 30. Provided that adequate supporting information has been submitted by Licensee, the annual adjustment to Rates shall be deemed approved and shall take effect as outlined in this section. However, in the event the annual CPI adjustment exceeds five percent (5%), then the amount exceeding 5% shall be reduced by .15. For example, if an annual CPI-U Rate adjustment would be 7%, the following would apply:

$$\underline{7\% - 5\% = 2\%}$$

$$\underline{2\% \times .85 = 1.70\%}$$

$$\underline{\text{Total annual CPI-U adjustment} = 5\% + 1.70\% = 6.70\%}$$

C. Semi-Annual Recycling Adjustments. Residential rates are subject to adjustment based on year over year changes in recycling facility tip fee changes, as provided in Exhibit A.

D. Extraordinary Adjustments. In addition to the adjustments provided above, the Rates shall, upon written request of Licensee, be further adjusted to fully capture increased expenses and lost revenue associated with performance of the collection services hereunder due to any one or more of the following causes:

- i. Uncontrollable Circumstance (see Section 10);
- ii. Changes in Applicable Law that is effective after the Effective Date of this Agreement;
- iii. Increase in surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities related to the collection services;
- iv. Changes in baseline assumptions, such as changes in volumes collected and changes in the amount of container contamination;
- v. Increase in the cost of transportation, including fuel and third-party transportation costs, as determined by reference to the Energy Information Administration of the U.S. Department of Energy's ("EIA/DOE") Weekly Retail on Highway Diesel Prices for the U.S.
- vi. Changes in the cost of labor as determined by the U.S. Bureau of Labor Standards, Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Transportation and material moving, Collective Bargaining Agreement or Actual Labor and Benefits Increases (or an equivalent).

- vii. Changes in the cost of equipment as determined by the U.S. Bureau of Labor Standards, Producer Price Index, PCU336120336120, Heavy duty truck manufacturing and costs arising from supply chain impacts (or an equivalent).
- viii. Any other extraordinary circumstances or causes or reasons that are not within the reasonable control of Licensee.

If Licensee requests a Rate adjustment pursuant to this Section 5(D), it shall prepare a Rate adjustment request setting forth its calculations of the increased costs/lost revenue and accompanying adjustment to the Rates necessary to offset such increased costs/lost revenue. The City may request documentation and data reasonably necessary to evaluate such request by Licensee, and may retain, at its own expense, an independent third party to audit and review such documentation and request. If such third party is retained, the City shall take reasonable steps, consistent with Applicable Law, to protect the confidential or proprietary nature of any data or information supplied by Licensee. The City shall approve all properly calculated Rate adjustments within ninety (90) days of Licensee's request, and the adjusted Rates shall be deemed to take effect as of the date of Licensee's request.

In addition, if the request is based upon any new or increased third party fees, taxes, assessments or charges, the City shall approve the Rate adjustment within such time period as necessary to ensure that such fees, taxes, assessments or charges are passed on to service recipients by the date the same are effective.

7. LICENSE AGREEMENT MODIFICATION: No modification or amendment of this Agreement shall be made without the written consent of the City and Licensee.

8. INDEPENDENT CONTRACTOR: Licensee agrees it is an independent contractor and not an agent or employee of the City. Licensee shall supervise and direct the Work to be done, using his best skill and attention. Licensee shall be solely responsible for all means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work required by the Agreement Documents. Licensee shall be responsible to the City for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under the License Agreement Documents.

9. SUBCONTRACTORS: The names of subcontractors submitted at the time of the submission of the proposal to the City shall be assumed to be the subcontractors, which the Licensee shall use for the Work required to be done under the Agreement Documents. Any substitutions or additions of subcontractors shall be subject to review and acceptance by the City. All work to be performed by subcontractors shall be performed in compliance with the Agreement Documents.

10. IMMIGRATION LAW COMPLIANCE WARRANTY: As required by A.R.S. §41-4401, Licensee hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees. Licensee further warrants that after hiring an employee, Licensee verifies the employment eligibility of the employee through the E-Verify program. If Licensee uses any

subcontractors in performance of the services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of such warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Licensee or subcontractor employee who works on the Agreement to ensure that the Licensee or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law. A breach of this warranty shall be deemed a material breach of this Agreement that is subject to penalties up to and including termination of the Agreement. Licensee is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. The City, at its option, may terminate the Agreement after the third violation. Licensee shall not be deemed in material breach of this Agreement if Licensee and/or its subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).

11. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

12. **CHANGE ORDERS:** A change order is a written order to the Licensee signed by the City Manager or other person designated in the Agreement Documents, issued after execution of this Agreement, authorizing a change in the Scope of Work or an adjustment in the license agreement sum or the Agreement time. A change order shall be signed by the Licensee indicating his agreement therewith. The City, without invalidating the Agreement, and without notification to Sureties, may order changes in the Work or in the general scope of the Agreement consisting of additions, deletions, or other revisions deemed necessary or desirable by the City. All such changes in the Work shall be authorized by change order and shall be performed and paid for under the applicable conditions of the License Agreement Documents. The City Manager shall have authority to order minor changes in the Work not involving an adjustment in the Agreement sum or extension of the Agreement time and not inconsistent with the intent of the Agreement Documents. Such changes shall be made by written order and shall be binding on the City and the Licensee. The Licensee shall carry out such written orders promptly.

13. **LICENSE AGREEMENT TIME:** This Agreement shall be for a term of five (5) years. The Agreement shall commence on July 1, 2023 (the "Commencement Date") and extend in full force and effect through June 30, 2028; and thereafter may be extended, for two additional one-year terms, at the sole option of the City. The City and Licensee shall meet and confer during the period March 1 through April 10, 2028, concerning an Agreement extension and any proposed amendments. In the event that the City and Licensee fail to reach agreement for extension of Agreement, the terms of this Agreement shall remain. To exercise the extension option, the City shall provide written notice to the Licensee no later than sixty (60) calendar days preceding the

scheduled date of expiration of the then-current term. This provision in no way limits the City's right to terminate this Agreement at any time pursuant to the provisions of this Agreement.

14. TERMINATION OR BREACH OF AGREEMENT:

A. All terms, conditions, and specifications of the Agreement are considered material, and failure to perform any part of the Agreement shall be considered a breach of the Agreement. Should the Licensee fail to perform any of its contractual obligations, the City may, at its option, terminate the Agreement thirty (30) days after written notification to the Licensee of the violation and failure of the Licensee to remedy the violation within said time. The thirty (30) days shall constitute a cure period for those breaches that do not involve the health or safety of the City's residents.

B. If the Licensee fails to provide in whole, or in part, the City refuse/recycling collection service required by this Agreement for a period in excess of 30 consecutive days, the City may take the following actions:

- i. At its option, take possession of all of the Licensee's equipment used in the performance of the Agreement in order that the City may itself carry out the terms of the Agreement. During such period, the liability of the City to the Licensee for loss or damage to equipment and facilities so used shall be that of a bailee for hire, ordinary wear and tear being specifically exempt from such liability.
- ii. Employ such means, as it may deem advisable and appropriate, to continue work until Licensee is again able to carry out its obligations under the Agreement.
- iii. Deduct any and all operating expenses incurred by the City from the performance bond. Should the City's cost for performing the obligations of the Licensee exceed the amount of the performance bond, the City shall be entitled to collect the amount from the Licensee by asserting a lien on all properties of the Licensee.

C. Failure of the City to terminate the Agreement as provided in Paragraph A above shall not waive any right of the City to any other remedy or to later notify Licensee that he is in breach of Agreement. The rights of City set forth in Paragraph B above shall be in addition to the rights of City to terminate this Agreement for the Licensee's failure to perform obligations under the Agreement and shall not be a limitation upon those rights.

D. In the event the Licensee shall be adjudged bankrupt, either by voluntary or involuntary proceedings, then this Agreement shall immediately be terminated, and, in no event shall the Agreement be treated as an asset of the Licensee after adjudication of bankruptcy.

E. In the event of termination of the Agreement for default or breach as specified above, the City shall have the right to forfeit and take possession of all Licensee's equipment, and records used in the performance of this Agreement. The City shall have the right to possession of said equipment, facilities and records until similar items can be acquired by the City to carry out the obligations of the Agreement or until another Licensee is engaged to perform the residential refuse/recycling collection service provided herein.

F. The Licensee shall not be liable for the failure to wholly or in part perform the duties required by this License Agreement, if such failure is caused by a Force Majeure Event, which are the following:

Any act of terrorism, severe weather, natural disaster or the imminent threat of such natural disaster, pandemics or epidemics, industry-wide labor or equipment shortages, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, labor unrest (e.g., strikes, lockouts, or other labor disturbances), acts of domestic or foreign governments or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of a Party.

G. Nothing in this Paragraph shall prohibit the City from pursuing any other legal remedy, which it may have. Nothing herein shall prohibit the City, at its expense, from using whatever self-help remedies, which may be available to it.

15. SUCCESSORS AND ASSIGNS: The City and the Licensee each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the Agreement Documents. Neither Party to the Agreement shall assign any right or delegate any duty under the Agreement in whole or in part without the written consent of the other Party, nor shall the Licensee assign any monies due or to become due to him hereunder without the previous written consent of the City and without notifying and receiving written consent from the Surety. This Agreement shall inure to the benefit of and shall be binding upon the City and Licensee and their respective successors and assigns.

16. PATENTED DEVICES, MATERIALS AND PROCESSES: The Licensee shall indemnify and save harmless the City and its duly authorized representatives from all liabilities, judgments, costs, damages, and expenses which may result from the infringement of any patents, trademarks, and copyrights by reason of the use of any proprietary materials, devices, equipment, or processes incorporated in or used in the performance of the Work under this Agreement.

17. **INDEMNIFY AND HOLD HARMLESS**: To the fullest extent permitted by law, Licensee shall appear, defend, indemnify and hold harmless the City, and its officers, employees, elected officials and agents against: (1) any and all losses and liabilities for personal injury, death, or property damage arising out of, or as a consequence of, any Work performed under the Agreement; (2) any and all expenses related to claims or lawsuits resulting from the above, including court costs and attorney(s) fees; and (3) any and all penalties and damages incurred by reason of the Licensee's failure to obtain a permit or license under, or comply with any applicable laws, ordinances, or regulations. Licensee's obligations in this Paragraph do not extend to any losses, liabilities, expenses, penalties or damages caused by the City's sole negligence, breach or willful misconduct. It is agreed that the Licensee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Licensee agrees to waive all rights of subrogation against the City for claims arising from the work performed by Licensee, its directors, officers, employees, agents, representatives, or any tier of subcontractors pursuant to this Agreement. The provisions of Paragraph are irrevocable and perpetual, and shall survive the expiration or termination of this Agreement.

18. **WRITTEN NOTICE**: All notices required under the Agreement Documents shall be in writing. Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the person who gives the notice. Faxed notices are permissible providing a receipt of fax is received. Notices shall be delivered or addressed to the person for each Party designated below or such other person or at such other address as the Party who is to receive the notice shall designate in writing:

If to the City:

CITY OF LITCHFIELD PARK
MATTHEW C. WILLIAMS, CITY MANAGER
214 WEST WIGWAM BOULEVARD
LITCHFIELD PARK, ARIZONA 85340

If to the Licensee:

19. **CLAIMS FOR DAMAGES**: Should either Party to this Agreement suffer injury or damage to personal property because of any act or omission of the other Party or of his employees, agents for whose acts he is legally liable, claims shall be made in writing to such other parties within a reasonable time after the first observance of such injury or damages. Claims against the City are required to be submitted in compliance with A.R.S. § 12-821.01 and § 12-822 and any amendments thereto.

20. WAIVER: The Licensee shall be held responsible for the duties and obligations imposed by the Agreement Documents and the rights and remedies available by law. No action or failure to act by the City or Licensee shall constitute a waiver of any right or duty afforded any of him or her under the Agreement, nor shall any action or failure to act constitute an approval of or acquiescence in any breach of the Agreement, except as may be specifically agreed in writing.

21. RIGHT OF CANCELLATION: Under A.R.S. § 38-511, as amended, the City may cancel this Agreement within three years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other Party to the Agreement with respect to the subject matter of the Agreement. In the event the City elects to exercise its rights under A.R.S. § 38-511, as amended, the City agrees to immediately give notice thereof to Licensee.

22. LITIGATION: Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing Party. Nothing herein shall preclude nonbinding arbitration if the Parties so elect in the event of a dispute hereunder.

23. GRATUITIES: The City may, by written notice to the Licensee, terminate this Agreement if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise were offered or given by the Licensee or any agent or representative of the Licensee to any officer or employee of the City for securing favorable treatment with respect to the awarding, renewal, or the making of any determinations with respect to this Agreement. In the event this Agreement is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Licensee the amount of the gratuity.

24. ANTITRUST CLAIMS: Licensee and the City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact borne by the City. Therefore, Licensee hereby assigns to the City any and all amounts received by Licensee as a result of any and all claims by Licensee for such overcharges.

25. INTEGRATION: This Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party has knowledge of the nature of the performance and opportunity for objection.

26. OBSERVANCE OF LAWS: The Licensee shall at all times observe and comply with all Federal, State and Local laws and ordinances. Licensee shall acquire and maintain all necessary

permits, registrations, licenses, and certifications required to provide refuse collection and disposal and recycling collection and transfer during the term of the Agreement. The Licensee shall notify the City within 24 hours of any lapse of necessary permits, registrations, licenses and/or certifications. Licensee's attention is especially directed to Chapter 9 of the Code of the City of Litchfield Park.

27. **INSURANCE REQUIREMENTS:** The Licensee shall obtain and maintain in full force and effect during the life of this Agreement, and any extension period, all of the following minimum scope of insurance coverages with an insurance company duly licensed by the State of Arizona with a current A.M. Best Company, Inc. rating of not less than A or above and a category rating of not less than "VIII" with policies and forms satisfactory to the City. Use of alternative insurers requires prior written approval from City.

A. **Commercial General Liability.** Commercial General Liability insurance with a limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for premises-operations, products/completed operations, contractual covering, personal injury/bodily injury, property damage, but not limited to, the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as Insurance Service Office policy form CG 00 01 07 98 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover the indemnification obligations of indemnification required by this Agreement. A general liability insurance policy may not be written on a "claims made" basis. These limits may be met through a combination of primary and excess liability coverage.

B. **Automobile Liability.** Commercial and Business Automobile Liability insurance for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than \$2,000,000, combined single limits, per occurrence for bodily injury and property damage. Coverage will be at least as broad as coverage Code 1 "any auto" Insurance Service Office policy form CA 00 01 10 01 or any replacement thereof.

C. **Workers' Compensation.** Workers' Compensation as required by State and federal law statutes having jurisdiction over its employees engaged in the performance of any Services herein. Licensee agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Licensee for the City and to require its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

D. **Umbrella/Excess Liability.** Licensee shall maintain Umbrella and Excess Liability insurance with a limit of not less than \$4,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

E. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.

F. Notice of Cancellation. Each certificate for each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage by endorsement to limits lower than those required by this Agreement, except after prior written consent from the City. Notice will be sent as required herein.

G. Endorsements/Certificates of Insurance. The commercial general liability insurance policy and business automobile liability policy and umbrella/excess liability policy shall contain or be endorsed to contain the following provisions:

- i. Additional Insureds. "The City of Litchfield Park and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of, or related to, activities performed by or on behalf of the Licensee pursuant to its Agreement with the City; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee; automobiles owned, leased, hired, or borrowed by the Licensee."
- ii. Primacy of Coverage. Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of insurer's liability. Licensee's policy shall be primary and non-contributory.
- iii. All policies, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of Work or services performed by Licensee under this Agreement.

H. Certificates of Insurance. Licensee shall provide the City Certificates of Insurance, showing the insurance coverages and the required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The insurance certificates shall be attached hereto and incorporated hereby by this reference. The City shall not be obligated to review any of the Licensee's Certificates of Insurance, insurance policies of endorsements or to advise Licensee of any deficiencies in such documents and any receipt of copies or review by the City of such documents shall not relieve Licensee from or be deemed a waiver of the City's right to insist on strict fulfillment of Licensee's obligations under this Paragraph.

I. **No Representation of Coverage Adequacy.** The insurance requirements herein are minimum requirements. The City in no way warrants that the minimum requirements are sufficient to protect Licensee from liabilities that might arise out of the performance of the Work under this Agreement by Licensee, and the Licensee is free to purchase additional insurance. Any insurance coverage carried by the City or its employees is excess coverage and not contributory coverage to that provided by the Licensee. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnification obligations under this Agreement. It shall be the responsibility of the Licensee to maintain adequate insurance coverage at all times, and its failure to do so shall not relieve the Licensee of any contractual obligations or responsibility. Failure on the part of the Licensee to maintain the insurance in effect shall be considered a failure in the performance of the Agreement and will be treated as such by the City.

28. **PERFORMANCE BOND:** The Licensee shall furnish a fully executed performance bond on the performance bond form attached to the License Agreement Documents. The bond shall be the lesser of \$250,000 or 50% of the annual collection fee based on the number of customers at the beginning of the Agreement anniversary date. The City has the option to forfeit said bond if the Agreement is terminated under the conditions set forth in the Agreement Documents.

THE INSURANCE AND BOND FORMS ATTACHED TO THIS License Agreement SHALL BE REQUIRED FOR USE ON THIS PROJECT. PERSONAL OR INDIVIDUAL BONDS ARE NOT ACCEPTABLE.

Bonding companies shall be "BEST RATED A" or better by the A.M. Best Company. Each such Bond shall be executed by a surety company or companies duly licensed and possessing a certificate of authority to transact surety business in the State of Arizona. The Bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the Bonds shall have attached thereto a certified copy of Power of Attorney of the signing official.

29. **EXECUTED COUNTERPARTS:** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. All signatures need not be on the same counterpart.

30. **PRECEDENCE OF AGREEMENT DOCUMENTS:** In the event of a conflict between provisions in the Agreement Documents, the provision in the Document highest in precedence shall control. The order of precedence in Agreement Documents is as follows:

- A. Supplemental Agreements, last in time being the first in precedence;
- B. License Agreement;
- C. RFP - Notice and Invitation for Proposals;
- D. Information for Proposers or Addendum to the RFP;

E. Licensee's Proposal.

As provided in Licensee's Proposal, the following changes are made with respect to the City's RFP - Notice and Invitation for Proposals and Information to Proposers:

- Section 3.6.B: City approval of Licensee route changes will not be unreasonably delayed or withheld.
- Section 3.12: City approval of recycling facilities will not be unreasonably delayed or withheld.
- Section 3.13: The following is added to the Agreement:
 - Licensee's services include the use of WM Smart Trucksm technology, which utilizes cameras to monitor overloaded trash and recycling containers, as well as contaminated recycling container. Licensee shall have the following process for addressing such overloads and contamination:
 - "Contamination" refers to materials placed in a Recyclables Container other than Recyclables.
 - "Contamination Charge" means an amount charged to Service Recipients, with reimbursement to Licensee, to compensate Licensee costs for separating non-Recyclables placed in Recyclables Containers, or for arranging special, unscheduled collections due to placement of Solid Waste in Recyclables Containers.
 - "Overage" is defined as (i) Refuse or Recyclables exceeding its Container's intended capacity such that the lid is lifted (or would be lifted if lowered) or (ii) Refuse or Recyclables placed on top of or in the immediate vicinity of the Container, in bags or otherwise.
 - Contamination; Overage.
 - Roll-Out Period – Education and Outreach. During the period beginning on the Commencement Date and ending 60 days later (the "Roll-Out Period"), Licensee shall provide an education program designed to minimize instances of Contamination and Overage. During the Roll-Out Period, where Licensee documents that a particular service recipient has Contamination or Overage, Licensee shall collect the offending container (where it can be done safely and excluding material laying on ground) and provide an electronic notice to the service recipient (if such contact information is provided by Customer) with the following information (a "Violation Notice"):

- Date of the offense;
 - Description of the offense;
 - If available, a photograph or video (or link to photograph or video);
 - A description of the materials that are appropriate for collection in said container and a link to view online with educational materials; and,
 - A website to obtain additional information and/or receive responses to questions the service recipient may have.
 - During the Roll-Out Period, Licensee shall not impose a Contamination or Overage Charge.
- Post Roll-Out Period. The following shall apply after the Roll-Out Period:
- Contamination.
 - First and Second Occurrences. Licensee shall service containers with Contamination except where there is visible Unacceptable Waste. Licensee shall provide a Violation Notice, where such contact information has been provided.
 - Third and Subsequent Occurrences. Licensee may opt to not collect Recyclables Containers with Contamination; in such event, the customer may request the container be collected as Refuse, and an additional fee will apply. Alternatively, Licensee may collect a container with Contamination and invoice the service recipient a Contamination Charge in the amount set forth in Exhibit A. In either case, Licensee shall provide a Violation Notice where such electronic contact information has been provided.
 - Overage. Licensee may opt to not collect Overage, unless caused by Licensee spillage of non-overloaded containers during collection; in such event, the customer may correct the Overage and request that Licensee return to service the container (an additional fee will apply). Alternatively, Licensee may collect the container with Overage and invoice the customer an Overage Charge in the amount set forth in Exhibit A. In either case, the Licensee shall provide a Violation Notice where such electronic

contact information has been provided. If there have been more than three instances of Overage in any 12-month period for a particular service (i.e., Refuse or Recyclables), Licensee may increase the customer's service level (i.e., larger or additional containers) to mitigate the Overage, and may increase the charges to such Customer according to the increased service level.

- Section 3.14: Instead of Licensee automatically sending the City copies of complaints within 24 hours, which would be overly burdensome, Licensee will provide such information upon request of the City.
- Section 4.1:
 - Only Licensee-provided carts will be used by customers, except for customers with under-ground containers. As such, this sentence is removed: "Citizens may provide their own container provided they are metal or plastic."
 - Regarding bulk item collection, Licensee will have an item limit, as set forth in this Agreement.
 - Regarding brush/yard waste, such material must be placed into a Licensee-provided container. Licensee will not provide collection of material outside a container, except during scheduled bulky collection.
- Section 4.2:
 - Modify the following sentence to say that City may review Licensee records with such information, not that Licensee will notify City within 24 hours: "Licensee must notify the City within 24 hours of exceedance of allowable GVW (including the load) of the trucks."
 - To satisfy this concern, the City hereby stipulates that "mid-range rear loading" trucks be used in the collection of garbage and recyclable materials in nonautomated collection service areas. These trucks may be single or double axle with a maximum body capacity of twenty-five (25) yards.
- Section 4.3: Licensee will not be liable for damage to streets caused by normal usage of its trucks.
- Section 4.6:
 - Regarding customers with in-ground cans, Licensee will collect extra material outside the container if the customer has contacted Licensee ahead of the scheduled pickup and purchased extra bag pickup(s).

- If Licensee is not able to make a scheduled collection due to a container not being accessible, Licensee will notify the customer by email or the customer may access Licensee's website for such information. In the event of missed collections not the fault of Licensee (e.g., container not accessible or container not set out), the next collection will be on the next scheduled collection day.
- Section 4.7.A:
 - See Licensee's proposal for set out limits for bulky item collections.
 - For other types of collections, all material must be placed within the Licensee-provided container or, in the case of in-ground cans, in the in-ground can. Customers may schedule extra bag pickups for a fee.

31. ADMINISTRATION AND INTERPRETATION OF LICENSE AGREEMENT: This Agreement shall be administered by the City Manager and his/her designated representatives. All work performed by the Licensee shall conform to the terms, conditions, and specifications of the Agreement.

32. PERMITS: The Licensee shall obtain at its own expense, all permits, and licenses required by law or ordinance, and maintain same in full force and effect throughout the term of this License Agreement.

33. CONTINUATION OF SERVICES - ISRAEL: The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01. Licensee certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a boycott of Israel, as that term is defined in A.R.S. § 35-393.

34. PROVISIONS REQUIRED BY LAW: Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Agreement shall forthwith be physically amended to make such insertion or correction.

35. SEVERABILITY: If any provision in this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

36. AMBIGUITIES NOT HELD AGAINST DRAFTER: This Agreement having been freely and voluntarily negotiated by the Parties and the rule of contract construction that ambiguities, if

any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Agreement.

37. HEADINGS/CAPTIONS: Headings and captions appearing in this Agreement have been inserted for convenience of reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision hereof.

38. EXHIBITS: All exhibits referenced in this Agreement are attached and incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed, the date and year first herein written.

CITY OF LITCHFIELD PARK

Thomas L. Schoaf, Mayor

ATTEST:

Terri Roth, MMC, City Clerk

APPROVED AS TO FORM:

Gust Rosenfeld, PLC, City Attorney
By: Joseph D. Estes

LICENSEE

BY: _____

TITLE _____

(Partner, Owner, or Person Authorized to sign on behalf of Corporation as provided above.)

EXHIBIT A

LICENSEE RATES

	<u>SERVICE CATEGORY</u>	<u>SIZE</u>	<u>ESTIMATED UNITS</u>	<u>PER UNIT PRICE</u>
	RESIDENTIAL CURBSIDE SERVICE:			
	(per household)			
1	Refuse Collection via 96-gallon container (twice/week service); Recyclables Collection (once/week service via 96-gallon container); and Bulk Item Collection (individual basis, not to exceed 6 times annually)		2,250	\$24.83/month
2	Refuse Collection for in-ground can service (twice/week service); Recyclables Collection (once/week service via 96-gallon container); and Bulk Item Collection (individual basis, not to exceed 6 times annually)		240	\$44.93/month
3	Additional 96-gallon refuse or recycling container			\$25.00 one-time delivery fee; \$10.35/month service fee per cart
4	Additional 65-gallon refuse or recycling container			\$25.00 one-time delivery fee; \$10.35/month service fee per cart
	(All containers provided by WM will be owned by WM.)			
5	Overage Fee			\$5.00 per incident after two warnings (not to exceed monthly base rate)

6	Contamination Fee			\$5.00 per incident after two warnings (not to exceed monthly base rate)
7	Pre-paid additional Refuse bag			\$5.00 per bag
8	Additional Bulk Item (items exceeding 3 per collection or 6 collections per year)			\$40.00 per item
	Rates 1-4 above are subject to the following recycling adjustment: WM rates assume a \$70 per ton tip fee. The tip fee will equal the blended value of single stream materials - \$113.40 per ton processing fee. For each \$15 this tip fee goes up or down, the rates will be increased or decreased by \$.15. This adjustment will be done semi-annually, with annual CPI adjustments. The per ton processing fee is subject to annual adjustments based on CPI.			
	LATE PAYMENT TERMS:			
	60 days non-payment, services will be suspended			
	90 days nonpayment, containers will be removed and account will be sent to collections.			
	A \$50.00 reactivation and cart delivery fee will be paid upfront plus any pending payments to re-start services.			
	MULTI-FAMILY SERVICE*			
	Refuse Collection (twice/week container service)	2 cu. Yard		\$230.95/month
		4 cu. Yard		\$281.56/month
		6 cu. Yard		\$332.17/month
		8 cu. Yard		\$382.78/month

	Recycling (weekly service where feasible)	2 cu. Yard		\$185.75/month
		4 cu. Yard		\$219.21/month
		6 cu. Yard		\$252.68/month
		8 cu. Yard		\$286.15/month
	* The above multi-family rates are subject to adjustment, up or down, based on market conditions. These rates do not include all applicable charges, such as fuel/environmental, RMO, etc. WM may have separate service agreement with such customers, which will supersede this agreement.			
	COMMERCIAL SERVICE*			
			1x per week	2x per week
	City commercial refuse unit	96 gallon	0	0
	City commercial recycling unit	96 gallon	0	0
	Commercial bin	2 yard	\$124.12	\$230.95
		4 yard	\$152.08	\$281.56
		6 yard	\$180.05	\$332.17
		8 yard	\$208.02	\$382.78
	Roll-off Service (price per haul; separate disposal fee will apply)	10 yard		NA
		20 yard		\$161.09
		30 yard		\$164.31
		40 yard		\$168.08
	Compactor Service (price per pull)	30 yard		\$250.00
	* The above commercial rates are subject to adjustment, up or down, based on market conditions. These rates do not include all applicable charges, such as fuel/environmental, RMO, etc. WM may have separate service agreement with such customers, which will supersede this agreement.			
	SPECIAL SERVICES:			
	City Facility Containers			

	8 cubic yard, once/week - service at Rec Center			\$0.00/month
	8 cubic yard, twice/week - service at Rec Center			\$0.00/month
	8 cubic yard, twice/week - service at Public Works Yard			\$0.00/month
	20 cubic yards (as needed)*			\$161.09/haul
	40 cubic yards (as needed)*			\$168.08/haul
	3-96 gallon recycling containers at City Hall; once/week			\$0.00/month
	service			
	2-96 gallon recycling containers at Rec Center; once/week			\$0.00/month
	service			
	*Rates are per haul only; there will be a separate disposal fee.			
	Rates for services to additional City facilities will be negotiated on a case by case basis.			

EXHIBIT B

RECYCLABLE MATERIALS

SINGLE STREAM SPECIFICATIONS

RECYCLABLE MATERIALS must be dry, loose (not bagged), unshredded, empty, and include **ONLY** the following:

Aluminum cans	Newspaper
PET bottles with the symbol #1 – with screw tops only	Mail
HDPE plastic bottles and containers with the symbol #2 (milk jugs, detergent containers, and shampoo bottles, etc.)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
PP plastic bottles and containers with symbol # 5 (ex. yogurt containers, syrup bottles)	Uncoated printing, writing and office paper
Steel and tin cans	Old corrugated containers/cardboard (uncoated) (ex. moving boxes, pizza boxes)
Glass food and beverage containers – any color	Magazines, glossy inserts and pamphlets

NON-RECYCLABLES include, but are not limited to the following:

Plastic bags and bagged materials (even if containing Recyclables)	Microwavable trays
Porcelain and ceramics	Mirrors, window or auto glass
Light bulbs	Coated cardboard
Soiled paper, including paper plates and cups	Plastics not listed above including but not limited to those with symbols #3, #4, #6, #7 and unnumbered plastics, including utensils
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics
Hoses, cords, wires	Yard waste, construction debris, and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows, sheets, etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, and paper cups
Any Recyclables less than 4” in size in any dimension	Propane tanks, fuel canisters
Batteries	

DELIVERY SPECIFICATIONS:

Material delivered by or on behalf of a customer may not contain Non-Recyclables or Excluded Materials. Licensee may temporarily dispose of Recyclables based on temporary processing facility closures or in the event there is no commercially viable market for such Recyclable type.

Recyclable Materials specifically exclude, and customer shall not deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or chemical or other properties that are deleterious or capable of causing material damage to any part of Licensee's property, its personnel or the public or materially impair the strength or the durability of the Licensee's structures or equipment, or any materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved in writing by Licensee (collectively, "Excluded Materials").